

2523
No. 11892

United States
Circuit Court of Appeals
For the Ninth Circuit.

PARAMOUNT PEST CONTROL SERVICE, a
corporation,

Appellant,

vs.

CHARLES P. BREWER, individually and doing
business as Brewer's Pest Control, ROSALIE
BREWER, his wife, RAYMOND RIGHT-
MIRE, CARL DUNCAN and EARL MER-
RIOTT,

Appellees.

Transcript of Record

IN TWO VOLUMES

VOLUME I

Pages 1 to 266

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED
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In the District Court of the United States for the
District of Oregon

No. Civ. 3936

PARAMOUNT PEST CONTROL SERVICE,
a corporation,

Plaintiff,

vs.

CHARLES P. BREWER, individually and doing
business as Brewer's Pest Control, ROSALIE
BREWER, his wife, RAYMOND RIGHT-
MIRE, CARL DUNCAN, EARL MERRIOTT
and all other persons associated with said de-
fendants as herein described,

Defendants.

COMPLAINT IN EQUITY

Comes now plaintiff and for cause of suit against
defendants, complains and alleges:

I.

Plaintiff is a citizen of the State of California
and defendants are all citizens of and residents in
the State of Oregon. The matter in controversy is
the restraint of unlawful conduct performed by
the defendants within the District of Oregon, the
recovery of sums of money due the plaintiff, and for
damages by defendants, all of which exceeds, ex-
clusive of interest and costs, the sum of Three
Thousand (\$3,000.00) Dollars.

II.

Plaintiff was and at all times since July 1, 1946, has been and now is a private corporation, organized under and existing by virtue of the laws of the State of California, with a principal office and place of business in the City of Oakland, County of Alameda, State of California.

(a) On or about August 25, 1947, said plaintiff qualified to do business in the State of Oregon by filing a verified declaration of its desire and purpose to engage in business in said district and state, together with a duly authenticated copy of its Charter or Articles of Incorporation, and did appoint a general agent and statutory attorney-in-fact who is a citizen of and resident in Multnomah County, Oregon, and did pay a fee for the filing of its declaration and proportionate [1*] part of the annual license fee for the year ending June 30, 1948, all of which was so satisfactory in substance and form to the Corporation Commissioner of said State of Oregon, that said official did on or about August 25, 1947, issue to plaintiff, under his official hand and seal, a Certificate of Authority to engage in business within the State of Oregon, and said corporation did establish a branch office and place of business in the said City of Portland.

(b) In addition to the general powers granted to and vested in plaintiff by the statutes of the states in which it does business, said plaintiff is, among other things, particularly organized for and author-

* Page numbering appearing at foot of page of original certified Transcript of Record

ized by its Articles to carry on the business of structural pest control, make inspections, use insecticides, fumigants, or allied chemicals for the purpose of eliminating, exterminating or preventing infestation of insects, rodents and fungi and other pests invading households or structures, and to buy ingredients, manufacture chemicals and formulae, use and sell the same, together with all kinds of machinery or devices for carrying on the business of structural pest control, and to create and apply for licenses, trademarks and processes, to manufacture and sell all types of chemicals and chemical compounds used in said business, and generally to transact or carry on any other powers necessary, proper or convenient to carry into effect the foregoing purposes, including the establishment of branches in other states than California, and for more than a year last past said plaintiff has been engaged in the above described business in the State of Oregon.

(c) Plaintiff has at substantial expense, at great labor and research, coupled with untiring effort, assembled for its private and confidential use, a large number of most valuable and useful receipts and formulae known and used by plaintiff in its business, and has acquired valuable and technical knowledge and experience necessary and requisite for the proper combining, mixing and compounding of the same, and knowledge of dependable sources of supply for obtaining ingredients and the strength and value thereof. For the same period and in the same [2] manner and for the purpose of pest con-

trol, it has acquired extensive and valuable knowledge of various use of its products and the best means of distribution thereof to best control all kinds of pests in various localities, structures and places infested thereby which are dangerous to the life, health or property of customers of plaintiff, and said antecedent knowledge is essential to the successful conduct of such business and particularly that of plaintiff, and such knowledge is a valuable trade asset of plaintiff and is by plaintiff disclosed in whole or in a substantial part to its employees, including the defendants above named, at the commencement of and during their training in behalf of plaintiff's business.

(d) In order to carry on said business in a unique, sanitary, safe, efficient and exclusive manner, plaintiff does

(i) issue to all agents, employees and representatives certain rules and regulations regarding its employees, their conduct, the method of serving, chemicals and their use and care, and the names and addresses of accounts or parties whom the plaintiff is to serve and the contract to be made for their particular guidance in said business, and plaintiff does require its employees to secure from said customers certain written contracts for service of customers which, among other things, therein describe the pest to be eradicated or controlled, the price therefor and terms of payment and the period during which said service is to continue;

(ii) make written agreement, often termed a franchise, with its principal agent for the sole and exclusive service by said agent to plaintiff, which service is confined to a particular territory and fully defines the relationship, as more particularly hereinafter disclosed;

(iii) make agreements with its employees to the end that in view of their training by the plaintiff, said employees will not give out information regarding plaintiff's business, as is more fully hereinafter set forth, all of which procedure herein described was [3] followed and performed by plaintiff in establishing its herein described business in the state and district of Oregon;

(iv) services its patrons with what is colloquially called "one shot service," meaning isolated single service, or more often under written contracts giving the price, terms of payment, duration of service, pest to be controlled and period of service. Said contract service greatly exceeds the single shot service. All such procedure was instituted and practiced by plaintiff and subsequently usurped, instituted and practiced by said defendants in the State of Oregon.

III.

All of said defendants were to a greater or less extent materially familiar with plaintiff's business, as above described, and were associated together and more particularly identified in the public and customers' minds, as well as among themselves, with plaintiff's business in the following manner:

(a) On or about July 1, 1946, plaintiff employed and defendant Charles P. Brewer accepted and agreed to act as agent for plaintiff in the State of Oregon in the business aforesaid, under a sole and exclusive franchise to render service for and the sale and use of the products of plaintiff in the business aforesaid for a period of ten (10) years after said date, cancellable on ninety (90) days' written notice by either party, to the effect that the agent would devote the whole of his time, attention and energies to promote the interests of the company, to take all contracts for service in the name of the company, to purchase his stocks, merchandise and chemicals from the plaintiff, to procure the sales of products and promote the service of the plaintiff in the territory allotted and to hold confidential the information given him in connection with the plaintiff's business, to be responsible for all accounts and the collection thereof and not to directly or indirectly communicate or divulge to anyone or make use of any of the trade secrets, formulae, processing and service of plaintiff's business for the benefit of anyone other than the [4] plaintiff, and to pay a proportionate amount of the business to the plaintiff and upon the termination of this agreement and for a period of three (3) years thereafter to not directly or indirectly communicate or divulge to or make use of for the benefit of any person, partnership or corporation any of the trade secrets, formulas, processing methods of the company, or the names, addresses or requirements of any of the customers of the company, or any other information

relating to the company's business which he may have acquired or learned during his employment, and will not canvass, solicit or cater to any of the customers of the company which he may know of because of his employment by said company, which at all times herein mentioned refers to the plaintiff, and which agreement contained other provisions, as more fully set forth in that certain "Sales Agent's Agreement with Paramount Pest Control Service" dated July 1, 1946, made and entered into for a valuable consideration, with plaintiff therein called the "Company" and defendant Charles P. Brewer therein called the "Agent," and subsequently ratified and confirmed, of which agreement, also called "franchise," a substantial copy in words, letters and figures is hereto attached and its allegations by this reference incorporated herein and made a particular part of this paragraph of this complaint and for reference marked "Exhibit 1."

That said agreement was on the following dates in the following manner, verbally modified, ratified and augmented:

(i) Defendant C. P. Brewer and plaintiff, through its president, on or about September 20, 1946, at Portland, Oregon, at the special instance and request of defendant Brewer and on his representation that it was too difficult to expand said business and do all the things he wanted to do to make a success of said business in Oregon and yet pay to the plaintiff the 20% of the gross business done by the agent, as specified in said contract or franchise,

did orally agree to modify said franchise in the following particulars only, to wit:

That every time defendant C. P. Brewer took any money for his [5] personal use from the business done by him under said franchise, he would pay to plaintiff a like sum of money; that such an arrangement would be retroactive to July 1, 1946, and continue up to January 1, 1947, by which time defendant Brewer would be profitably established. Such arrangement was made by plaintiff under the still continuing confidence in the ability and integrity of defendant Brewer and with the understanding that defendant Charles P. Brewer was making and would continue to make a profit and would not draw out any money except as said business would warrant said total withdrawal, and in all other particulars the provisions in said franchise contained would continue in full force and effect.

Under the above modification, an indebtedness from defendant Charles P. Brewer to plaintiff of some \$1,200 to \$1,500 was forgiven, the exact amount of which is known to said defendant.

(ii) On January 1, 1947, said franchise was again in full force and effect, and during the months of January and February of 1947 there became due and owing thereunder to plaintiff from defendant Brewer the total sum of \$994.25 upon which defendant C. P. Brewer made a payment on February 6th of \$250.00, and again on March 6, 1947, he paid \$250.00, making a total of \$500.00 payment, and the balance of \$494.25 was paid March 13, 1947, but

the franchise obligations for the months of March, April, May, June and July, amounting to the sum of \$2,675.41 were not paid and demand was made therefor upon the defendant Charles P. Brewer and he refused to pay the same, and on or about June 20, 1947, at the special instance and request of defendant Charles P. Brewer and under plaintiff's continuing confidence in his sincerity, ability and integrity, plaintiff and defendant Charles P. Brewer again made a mutual modification of the terms of payment of said franchise and did compromise all sums due under said franchise and its part time modification, and agreed that for the period from July 1, 1946, to June 30, 1947, the total sum of money due, owing and unpaid by defendant Charles P. Brewer to plaintiff was \$3,359.61, and said compromise was satisfactory [6] and agreed to by the defendant Charles P. Brewer, and upon which he made a payment of \$259.61 on July 9, 1947, and, with other credits allowed, left a balance of money still due, owing and unpaid by defendant Charles P. Brewer to plaintiff of \$2,507.41, for which demand has been made, and defendant Charles P. Brewer has failed, neglected and refused to pay the same.

(iii) Said franchise agreement had never been cancelled by either party and was ratified by payments as aforesaid and was from July 1, 1947, up to and including August 1, 1947, in full force and effect and under the terms thereof defendant Charles P. Brewer owed the plaintiff for said month of July, 1947, the sum of \$478.15 for which demand has been made and which is now due, owing and unpaid.

(iv) Still having confidence in the ability and integrity of defendant Charles P. Brewer and at his special instance and request and as an aid by the plaintiff to said defendant in building up the business to the profit of both parties and because defendant Charles P. Brewer complained he could not do it alone, plaintiff and defendant Charles P. Brewer on or about January 20, 1947, at Portland, Oregon, agreed to augment said franchise agreement with additional help and compensation, and mutually and orally agreed as follows:

Plaintiff would and did send a salesman and serviceman from its main office at Oakland, California, to Eastern Oregon territory to there and then build up a mutual business, and plaintiff would pay the salaries and expenses thereof in the first instance, and any profit or loss and expense of said venture would be shared equally between plaintiff and defendant Charles P. Brewer;

That the total expense of said undertaking was \$1,921.74 of which defendant's share was \$960.87 and the immediate proceeds from said undertaking, not including the future benefits to the said business thereby established, was \$1,317.00 of which plaintiff was entitled to one-half or \$658.50, or a total amount due plaintiff from defendant under this special contract of \$1,619.37, and demand has been [7] made for said sum due, owing and unpaid and defendant Charles P. Brewer has refused to pay the same.

(b) That defendants Raymond Rightmire and Carl Duncan are both residents of and inhabitants

in the State of Oregon and were employed by plaintiff for some time prior to July, 1947, and each for himself and as a condition of employment did sign and deliver to plaintiff its agreement in writing in words, letters and figures substantially as follows, to wit:

“Because I do have a limited knowledge of the exterminating, pest control, or termite business, and do not know any formulas, processes, methods, or other trade secrets, thereof, I agree not to give out any learned information such as formulas or customs, or to go to work for any other pest control firm for a period of three (3) years after the termination of my employment with this company, in the district in which I am now working.”

(c) Defendant Rosalie Brewer is now and at all times herein mentioned was the wife of the defendant, Charles P. Brewer, and a resident of and an inhabitant in the State of Oregon and was bookkeeper for said defendant and in partial management of plaintiff's office at Portland, Oregon, and in complete management upon the absence of defendant Charles P. Brewer, and was authorized to and did sign checks of the plaintiff, together with her defendant husband, and either in whole or in part substantially and materially knew all of the matters and things herein alleged in connection with plaintiff's business and did participate in depriving plaintiff of its business, as hereinafter more fully alleged.

(d) Defendant Earl Merriott is now and at all times herein mentioned has been a resident of and an inhabitant in the State of Oregon and was employed by plaintiff on or about February 3, 1947, through the action of defendant Charles P. Brewer who, had he done as required by his agreement, would have signed defendant Merriott upon a contract similar to that of said defendants Duncan and Rightmire, but defendant Merriott knew all, or substantially all, of the matters and things herein alleged and was particularly familiar with formulas, methods, chemicals [8] and service of plaintiff, and elected to associate himself with the defendants, as hereinafter described.

IV.

Said defendants were for various periods of time prior to August 1, 1947, either in the employment or service directly or indirectly of plaintiff and thereby possessed of the knowledge of plaintiff's business, its chemicals, methods of application, all as above described, and all the patrons and customers of plaintiff and their addresses who were either under contract with or served by the plaintiff; that said employment of defendants by plaintiff terminated by voluntary act of defendants in accordance with the scheme hereinafter described, on August 1, 1947, and for some time prior thereto and during their employment, the exact time being to the plaintiff unknown, defendants and each of them with the others did combine, conspire, confederate, agree and cooperate among themselves and with each other to do the following things:

(1) to breach and refuse to perform their individual contracts and agreements or employment with this plaintiff and to aid and assist each other in such purpose and scheme;

(2) to acquire for themselves and for the benefit of each other and their joint association all the knowledge defendants could of plaintiff's business, chemicals, formulae, material and methods, as hereinabove described, together with the names and addresses of all patrons and customers or contacts of plaintiff;

(3) to serve plaintiff's customers well and thereby to build up a good will for themselves thereafter, where the customer would know only the attending defendant or defendants as the party serving said customer in the work of pest control and to thereby be able by such personal contact to later acquire this account for their own use and benefit and to the exclusion of that of the plaintiff;

(4) for themselves to take over, acquire, hold and serve permanently all the customers and patrons of plaintiff immediately upon the [9] termination of their employment which they then and there contemplated doing when they had sufficiently established their own good will with customers of plaintiff which was to be done during a period of three years immediately following the termination of their employment and to take unto either their association or to themselves all money of the plaintiff, its methods, chemicals, systems, service, patrons, business, equipment and profits and place themselves in relation to the customer in the identi-

cal position previously occupied by plaintiff, and to do for all customers of plaintiff the identical or similar service which they had performed while in the employ or association with plaintiff so that in the customers' mind there would be no distinction in the matter of service;

(5) to cause customers or patrons of plaintiff to break their contracts with plaintiff or to cease their single shot service in favor of themselves and to advise and represent to patrons that plaintiff was liquidating or going out of business or no longer serving them, and that they were taking over the business and would carry on in identically the same efficient and satisfactory manner as they had previously done and to do so quickly and effectively, thereby intending to acquire said plaintiff's business prior to the time the plaintiff would have any opportunity to reestablish its business, procure the necessary trained personnel involved in its service and the equipment necessary to serve the customers either under contract or single shot service and thereby defendants would acquire all the business of plaintiff;

(6) to ignore the territorial limits of said franchise and go into the states of Idaho or Washington and by application of plaintiff's products, methods and equipment to establish for themselves a business in said localities;

All of which conspiracy, scheme and plan said defendants are now performing and carrying into effect by their joint and several action. [10]

V.

To effect said conspiracy and scheme of self-enrichment, defendants, either jointly or severally, but always with the purpose of aiding and abetting their organization and each other, did do and accomplish the following overt acts, to wit:

(1) On July 24, 1947, and after defendant Charles B. Brewer felt himself sufficiently entrenched in the favor of the customers of said plaintiff, said defendant Charles P. Brewer did in writing and without the ninety days' notice specified in his contract, make, sign and deliver an instrument terminating his franchise as of August 1, 1947, of which the following in words, letters and figures is substantially a copy:

“July 24, 1947.

“Mr. T. C. Sibert
638 - 16th St.
Oakland 12, Calif.

“Dear Ted:

“Will you please except my resignation and the termination of my franchise as of August 1, 1947.

“I will, before August 1, take inventory of all supplies and equipment owned by me, so that we will be able to effect a cash settlement at that time. If you care to buy my equipment that will be alright with me, otherwise I'll keep it as I could maybe use it in the future.

“Please advise me as to whether you want to audit the books, or if I should have it done here by a registered C.P.A.

Respectfully yours,

CHARLES P. BREWER.”

(2) took all the chemicals and equipment previously used and continuing to use some parts thereof by delivering some and keeping the residue.

(3) Defendant Charles P. Brewer bought from a third party an automobile with plaintiff's money, taking the same in his own name and mortgaging it to a bank whereby repossession by plaintiff was prevented, which automobile he continues to use in the business of said defendants.

(4) Defendant, Rosalie Brewer, under the conspiracy and scheme [11] herein described, did make, execute and acknowledge on July 30, 1947, a certain “Certificate of Assumed Business Name” wherein the said Rosalie Brewer (she not being under the same contract or franchise with her husband) did falsely and fraudulently declare that the real and true names and post office addresses of the persons conducting, having an interest in or intending to conduct the business of pest control under the name and style of “Brewer Pest Control” located at Portland, Multnomah County, Oregon, were the following, to wit: “Rosalie Brewer, post office address 4929 Northeast 28th Avenue, Portland, Oregon,” which assumed business name defendants caused to be recorded in Book 61, Record

of Assumed Business Names of Multnomah County, Oregon, at page 212 thereof.

Subsequently, at an appropriate time, when defendants felt they were no longer in danger of any action on the part of this plaintiff, the said defendant Rosalie Brewer did on, to-wit, August 27, 1947, make, sign and acknowledge a "Certificate of Retirement" stating falsely and fraudulent that she no longer had any interest or business in "Brewer's Pest Control," and concurrently with said defendant Rosalie Brewer filing her Certificate of Retirement, the said defendant Charles P. Brewer did falsely and fraudulently file a "Certificate of Assumed Business Name" in which he declared that the person conducting, having an interest in and intending to conduct the business of pest control under the assumed business name of "Brewer's Pest Control" was "Charles P. Brewer, post office address 4929 N. E. 28th Avenue, Portland 11, Oregon";

All of the above described action being in furtherance and execution of the conspiracy and association hereinabove described, and defendant Charles P. Brewer continues to operate under said alleged assumed name, and all of said defendants have solicited, served and applied plaintiff's methods and products under the name of "Brewer's Pest Control" or similar identification of their association.

(5) That the above described action of acquiring said business [12] of plaintiff was by defendants Charles P. Brewer, Raymond Rightmire and Carl

Duncan done knowingly and intentionally, contrary to and in violation of their agreement not to go to work for any other pest control firm for a period of three years after the termination of their employment with plaintiff company in the district in which they were working, and defendants Rosalie Brewer and Earl Merriott were knowingly and intentionally aiding and abetting, under their scheme and conspiracy for self-enrichment, the said defendants Charles P. Brewer, Raymond Rightmire and Carl Duncan in the manner hereinabove alleged.

(6) That all of said defendants knowingly and intentionally aided defendant Charles P. Brewer in the violation of his franchise contract in the following particulars:

(a) In not serving the Company faithfully, diligently and in accordance with his best abilities in all respects and in not using his utmost endeavors to promote the interests of the Company;

(b) did not take all contracts for work and service to be rendered by the Agent to customers in the name of the Company;

(c) did not aid in causing the proceeds of said service to be paid to plaintiff and did not pay any sums arising from said business to plaintiff;

(d) in not purchasing all of his supplies from the plaintiff;

(e) did not use every effort in the promotion and sale of the products of plaintiff or do what-

ever was necessary or required by the plaintiff to increase the business of said plaintiff;

(f) did take from the records of the plaintiff the private information of plaintiff, including copies of the names and addresses of customers, and used it against the plaintiff and in furtherance of their own business;

(g) did not deliver up to the plaintiff on demand all of the property, cards, information, stock, merchandise, chemicals, equipment or instrumentalities used in connection with said business;

(h) while making collections, did not make himself responsible [13] for all accounts served in his territory and for the collection thereof and for all men working for or under him in said territory;

(i) by canvassing, soliciting or catering to any and all of the customers of the plaintiff which he had known because of his employment by said plaintiff;

(j) by taking to themselves rather than protecting trade secrets, formulas, methods, processes and the like and all customer lists, operation data discovered, acquired or prepared during their employment, as the sole property of the Company.

That all of said defendants, since the cessation of their employment with the plaintiff and under the conspiracy and scheme herein alleged, have done the identical or similar service for the de-

fendant Charles P. Brewer or their organization which they did and performed for this plaintiff and which service is done for their personal and associated enrichment and benefit and have taken unto themselves all of the business created by the plaintiff through its agents and employees and intended to be and previously acknowledged by said defendants as the business solely owned and served by the plaintiff.

VI.

That a full and complete accounting and statement of the obligations due, owing and unpaid to plaintiff from said defendants, individually or collectively, is as follows:

(1) From Defendant Charles P. Brewer:

(a) Balance due under the settlement as of June 30, 1947, from defendant Charles P. Brewer to plaintiff, \$3,100.00;

(b) Due, as aforesaid, on the July 1947 franchise account, \$478.15;

(c) Investment of plaintiff, which was a total investment in furniture, fixtures, equipment and tools that were on the territory at the time Charles P. Brewer took his franchise and which he received, \$1,259.63;

(d) Defendant Charles P. Brewer failed to turn in the [14] balance of the assets hereinafter mentioned and which plaintiff would prefer in kind. but which was of the reasonable sum of \$973.00;

(e) Under the modified agreement between defendant Charles P. Brewer and plaintiff herein, whereby said defendant was to pay to plaintiff the same sum of money that took from the business for himself, an accounting has disclosed that there were some twenty-one items either in his favor personally or charged to expense wherein there were no invoices or supporting data on file in said Brewer's office to show that the same were actually paid or that they were legitimate expenses of the business or otherwise deductible from the earnings of the Agent. These amounted to the sum of \$925.89 and until and unless said defendant Brewer properly accounts for the same, they are charged against his account as unauthorized withdrawals;

(f) Under the special agreement hereinbefore alleged in Paragraph III (a) (iv) on page 7 hereof, the sum of \$1,619.37 is due, owing and unpaid from said defendant Brewer to Plaintiff;

The above liabilities making a total of \$8,356.34;

(g) There is to be credited to defendant Charles P. Brewer's account the following:

Accounts receivable not collected by defendant Charles P. Brewer, as specified in said contract, but collected by the plaintiff and credited to said defendant, \$1,297.25;

Inventory turned in by defendant Charles P. Brewer of \$540.71;

Turned in by defendant Charles P. Brewer on the original investment of plaintiff in the assets, \$1,465.71;

The above credits making a total of \$3,303.67, and leaving a balance of \$5,052.67 due under contractual obligation.

(2) Damage caused by said defendants to this plaintiff by virtue of their conduct, as hereinbefore described, includes the following:

(a) When said defendants started to usurp and take over all [15] of plaintiff's contracts, plaintiff sent men into said territory to interview and hold such accounts as plaintiff could, and the action of said defendants, as herein described, damaged plaintiff in the amount of said expense, consisting of \$3,596.95.

(b) There were unexpired contracts between plaintiff and its customers which were taken over and served by the defendants, which contracts were in writing and signed for a year but which, before their unexpired period had run, were cancelled by customers because defendants were serving them, and the sum of money lost by virtue of the cancellation of said contracts because of the action of said defendants, is the sum of \$2,481.50.

(c) There were other contracts between plaintiff and its customers which were in writing and the original term thereof had expired, but which written contracts provided that the terms of said written agreement with the cus-

tomers were to continue after the expiration of the original term "until cancelled in writing by either party," and said contracts were not cancelled in writing or otherwise until the defendants themselves, by their concerted action, usurped and took over the service covered in said written agreements, and the damage occasioned by defendants to plaintiff in taking over such service represented a sum of \$775.00.

(d) When said defendants, by their concerted action, took over the business of plaintiff in Oregon and other localities, men who were trained and valuable to the plaintiff's service in California and Washington were taken away from their respective localities and the business of this plaintiff and sent to Oregon for the purpose of serving plaintiff's business here, and in this process the plaintiff lost money which constitutes an item of damage occasioned by these defendants against this plaintiff and which item of damage, if it is ascertainable, should be included herein as a claim against said defendants, and unless the same is ascertainable (and at the present time plaintiff has no means of definitely ascertaining this amount), it is alleged that this [16] certain damage, but indefinite in amount, constitutes an additional grounds for injunction and equitable relief.

(e) That the defendants, and each of them, have been actively engaged since August 1, 1947, and prior thereto, in taking away the business

and accounts, either under contract or single shot, of plaintiff, in violation of their three-year non-competitive agreement, as herein described, and plaintiff alleges that this damage has amounted to approximately the sum of \$1,500.00 per month, or a damage of a total amount of \$4,500.00 to the present date and continuing, and increasing as long as defendants are permitted to operate under said conspiracy.

VII.

(a) Plaintiff has either performed and there has occurred all conditions precedent to the bringing of this suit or defendants' conduct has made the same impossible or unnecessary.

(b) Plaintiff has set forth herein the names and activities of all parties known to it as participating in the conspiracy, and alleges that it is informed and believes that there are others connected with said defendants in this conspiracy, but whose names and addresses are not known at this time to this plaintiff.

VIII.

In addition to the sums of money due and the damages occasioned to plaintiff by defendants jointly and severally as above described, said defendants have jointly and severally caused damage to plaintiff which is difficult and impossible of ascertainment because of the nature of defendants' actions, and has caused plaintiff to expend large sums of money in the protection of its rights, and unless

restrained by action of this Court, said defendants will jointly and severally continue in said course of conduct and create further irreparable cost and damage to plaintiff; that plaintiff has no plain, adequate or speedy remedy at law, but only in this court of equity.

Wherefore, Plaintiff Prays a judgment of this Honorable Court as [17] follows:

(1) For a temporary restraining order, enjoining said defendants and all persons now unknown to plaintiff and similarly engaged with defendants, as herein described, and each of them, from continuing their unlawful and unconscionable conduct, all as above mentioned, and, upon final hearing of this cause on the merits, that said temporary restraining order be made a permanent injunction against defendants and each of them under penalty of contempt of court if defendants, or either of them, continue in said practice herein described or in conflict with their agreements;

(2) Against said defendants, and each of them, for such sums of money as the Court may find are due, under the above allegations, to plaintiff either under contract or in damages, and to pay over to plaintiff all the gains, profits and advantages derived by defendants, or either of them, from their unlawful conduct, as herein described, or such sum of damages as the Court finds proper;

(3) Requiring defendants to specifically perform said agreement in delivering up to this plaintiff all merchandise, stock, chemicals, equipment, formulas

and secret trade information used exclusively in the above described business of plaintiff and acquired at great expense by plaintiff and protected by contract from falling into the hands of unscrupulous and unlawful competitors, and that the same be impounded in court during the pendency of this action;

(4) For plaintiff's costs herein; and

(5) Such other, further or different relief as to this Honorable Court may seem just and equitable in the premises;

(6) Plaintiff demands of defendants, and each of them, that within fifteen (15) days from the service hereof, each of said defendants make the following answers separately and fully, in writing and under oath, for the purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

(a) That each of the following documents pleaded in this [18] Complaint are genuine:

(i) the contract or franchise of July 1, 1946, between plaintiff and defendant Charles P. Brewer, hereto attached as "Exhibit 1";

(ii) the agreement between plaintiff and employees, as described in Paragraph III (b) on page 8 hereof;

(iii) the letter of resignation, as described in Paragraph V on page 11 hereof.

(b) That each of the following statements are true:

(i) That defendants are jointly and severally
(1) soliciting or (2) serving customers or

patrons for pest control service who were formerly (1) under contract with plaintiff for similar service or (2) who were served by plaintiff for pest control.

(ii) That upon service of customers by the defendants, or either of them, the defendants used the following notice:

“Patrons

This establishment inspected and serviced
each month for disease carrying pests

By

Brewer’s Pest Control

State-Wide

4929 N. E. 28th Avenue, Portland 11, Oregon

1947

WEBster 8082”

(c) Submit a list of all patrons and customers and their addresses served by defendants, or either of them, and whom they are now serving or have served since August 1, 1947, in the matter of pest control.

Dated at Portland, Oregon, this 22nd day of October, 1947.

KENNETH C. GILLIS,
F. LEO SMITH,
ROBERT R. RANKIN,

Attorneys for Plaintiff.

[Endorsed]: Filed October 24, 1947. [19]

EXHIBIT No. 1

SALES AGENT'S AGREEMENT WITH PARAMOUNT PEST CONTROL SERVICE

This Agreement executed in duplicate at Oakland, California, this 1st day of July, 1946, by the Paramount Pest Control Service, a corporation, hereinafter called the Company, and Charles P. Brewer of Portland, Oregon, hereinafter called the Agent,

Witnesseth:

1. The Company hereby grants to the Agent, and the Agent does hereby accept the sole and exclusive franchise to represent the Company in rendering services for and selling and using the products of the Company in that certain territory described as follows, to wit: The entire State of Oregon. Any deviation shall be in writing with Franchise holders of adjoining states, a copy of which must be sent to Company.

It is understood and agreed that this franchise only covers such services and products as can be rendered, used and sold by Agent under a Group "E" Owners and Operators License issued by the State of California, and that nothing herein contained shall prevent Company from rendering, using and selling services and products of the Company in said territory which are not covered by said Group "E" Owners and Operators License, or which cannot be rendered, used or sold by Agent by reason of the limitations of said License.

It is agreed, however, that if and when Agent secures a License to render services for and to use and sell products of the Company in addition to those covered by Group "E" Owners and Operators License, that Agent shall then have the right to [20] and he is hereby granted the Exclusive Franchise under the terms and conditions of this contract for such additional services and products.

2. This Agreement shall become effective on the 1st day of July, 1946, and shall, unless sooner terminated as herein provided, continue in full force and effect for a period of ten (10) years from said date. Said agreement may be cancelled by either party at any time on ninety days' written notice to the other. At the end of said period of ten (10) years provided for herein, in the event that all of the terms and conditions of this agreement have been kept and performed, said agreement shall thereby be automatically renewed for the same period of years as originally granted for, and thereafter shall continue for successive like periods unless cancelled, as provided herein.

3. The Agent shall devote the whole of his time, attention and energies to the performance of such duties as may from time to time be assigned to him by the Company, and shall not either directly or indirectly, alone, or in partnership, be connected with or concerned in any other business or employment whatsoever during the said term of his employment, and shall serve the Company faithfully, diligently and according to his best abilities in all respects, and use his utmost endeavors to promote the interests of the Company.

4. All contracts for work and services to be rendered by Agent to customers shall be taken in the name of the Company, the original of said contract shall, upon its execution, be forwarded to the Company, the Agent retaining a Copy and the Customer being [21] furnished a copy.

5. Agent agrees to pay Company in the manner hereinafter provided for such Franchise twenty (20%) per cent of the gross business done by Agent. As compensation for his services, Agent shall retain all gross profits over said twenty per cent (20%) above mentioned.

6. From his compensation, Agent agrees to pay the following expenses of maintaining said business in said territory, namely:

- a. Wages Service
- b. Materials & Expense Service
- c. Wages Salesmen
- d. Commissions
- e. Advertising
- f. Auto Expense—Gas, Oil & Repairs
- g. Depreciation
- h. Insurance
- i. Taxes & Licenses
- j. Traveling Expense
- k. Wages Office
- l. Bad Debts
- m. Donations
- n. Gas Light & Water
- o. Legal & Accounting
- p. Miscellaneous Expense

- q. Office Expense—Stationery, Printing & Supplies
- r. Telephone & Telegraph
- s. Discounts & Allowance—Received
- t. Profit & Loss on Sales of Capital Assets
- u. Tithing
- v. Discounts & Allowance—Paid
- w. Interest Paid

together with such other expense as in the judgment of the Company should be charged against said business.

7. Company agrees that from the amount due the Company under paragraph 5, there shall be deducted an amount equal to ten per cent (10%) thereof, which shall be paid to the Christian Service Foundation, a non-profit charitable organization. Agent agrees that from the monthly net profit of said business shall be deducted an amount equal to ten per cent (10%) of said net profit, [22] which shall be paid to said Christian Service Foundation.

8. Agent shall open a bank account in the name of the Company and shall deposit therein all moneys received by him in connection with said business. Moneys shall be drawn out of said account only upon the signature of Agent and some employee of Agent, to be designated by Agent.

9. Agent shall keep books of account showing all transactions in said business. Said books shall be opened by Company Auditor and shall then be maintained to conform with the systems used by Company and as directed by said Auditor. Agent agrees

that all times the representatives of the Company shall have free access to the offices of Agent and to all books, records, materials and documents used by said Agent in connection with the business covered by this contract.

10. The Company Auditor shall audit the books of Agent immediately after the last day of each and every month during the life of this contract, and prepare a statement of the business done during the previous month by Agent, together with a profit and loss statement for said previous month. Upon the completion of said statement and presentation of a copy thereof to Agent, said Agent agrees to forthwith deliver to said Auditor a check payable to Company for the amount due Company under said statement, less ten per cent (10%) thereof; a check payable to Christian Service Foundation for the ten per cent (10%) of the amount due Company under said statement, and a check payable to Christian Service Foundation for an amount equal to ten per cent (10%) of agent's net profits, as shown by said statements. Said checks, in any event, must be delivered on or before the 10th day of the month in which they are due. It is agreed by both parties that the decision of the Auditor as to the correctness of said statement and of all items listed thereon shall be final and conclusive as [23] to both parties.

11. Agent shall be allowed deductions from gross business acquired in any one month as shown by his books for cancellations of any business, and allowance slips duly allowed. These deductions shall be

made from the gross business of the next succeeding month after the month when such cancellations or allowance slips occur.

Agent shall stand all loss for failure to make collections.

12. The Agent shall maintain an office in his territory and shall cause the name of the Company, as well as his own, to be properly listed in the local telephone directory in the classified section thereof, and shall display upon the windows of any office the name of the Company as well as his own name, as Agent. At the time of signing of this agreement, the Company agrees to furnish him with such trucks and equipment as in its judgment is necessary for his use. Thereafter Agent agrees to purchase on his own account such additional trucks and equipment as shall be necessary to handle his said business.

13. Upon the signing of this contract, Agent agrees to purchase from Company such stock, merchandise, chemicals and materials as will provide him with such quantity of each as will meet the needs of his business for the next succeeding thirty days and that he will continue to maintain such quantities of each as will meet the needs of his business for a thirty day period. Notice of his intention to purchase any of the above must be given at least thirty days in advance of the delivery date.

14. The Agent agrees to use every effort in the promotion and sale of the products and services of the Company in the above territory and do what ever shall be necessary or required by the Company to increase the business of said Company in said territory.

15. Each of the parties hereto shall be excused from the performance of the terms and conditions herein contained, and this agreement and all the terms and conditions herein contained are subject to such interference, interruption or cessation as may be caused by acts of God, strikes, lock-outs, floods, boycotts, picketing, acts of the public enemy, governmental priority regulations, laws, regulations or executive orders of the Government of the United States, or any other cause or condition over which the party has no control.

16. The Company agrees to furnish the Agent all advertising matter, contract forms, letterheads and any other printed matter which, in the opinion of the Company, is necessary in the operation of the business of the Agent, and which Agent agrees to pay for. All advertising, window displays and listings shall conform to the methods as given to him by the Company.

17. It is expressly understood and agreed by the Agent that all of the rules and regulations of the Company which are now printed and in full force and effect, or any amendments that may be made hereafter, or any subsequent rules and regulations made by the Company, shall be and they are hereby declared a part of this contract and binding upon the Agent, and the Company agrees to furnish the Agent with a copy of any rules and regulations now in force, and to immediately furnish him with any amendments or new rules and regulations that may be hereafter adopted. [25]

18. The Agent agrees to at all times keep intact all of the Communications and other material given to him by the Company as confidential information, and that in the event of the termination of this agreement he will surrender all of the same to the Company or its designated agent, and will not at or subsequent to the termination of this agreement divulge such confidential information to anyone outside of the organization.

19. Any notice to be given under the terms of this agreement by the Company to the Agent may be given by placing the same in a sealed envelope addressed to the Agent at, and said sealed envelope containing the notice so addressed, with postage thereon prepaid, shall be deposited in the United States Post Office at Oakland, California or any other place. In the event that the principal place of business of the Agent may be changed, and the Company is notified of said fact prior to the mailing of any notice under this agreement, then said notice shall be sent to the address where the principal place of business is then located. Upon such deposit being made, as aforesaid, the notice shall, for all purposes of this agreement, be complete.

20. In the event of the termination of this agreement, Agent promises and agrees to surrender and deliver to the Company, upon demand, possession of the office, all of the records, cards, information, stock, merchandise, chemicals, equipment and any and all instrumentalities connected with and used in his said business. Said demand may be made at

any time after notice of termination is received or served.

21. Should Agent own the real property and building in which his said office is located at the time of the termination of this agreement for any cause, then said Agent agrees to and does [26] hereby grant Company the right and option, for a period of ninety days after the termination of this contract, to purchase said property at the fair market value thereof.

22. In the event of the termination of this agreement the Company agrees to pay Agent, or his legal representatives, the cost of all stock, merchandise, chemicals and equipment owned by Agent and used in connection with said business, less any depreciation on same that appears on the books.

23. Neither this agreement nor any interest therein shall be assignable at the hands of said Agent, except as hereinafter provided, and in the event any assignment is made by the Agent for the benefit of creditors, or if said Agent be adjudged a bankrupt, whether voluntary or involuntary, or if a receiver be appointed in any proceedings against the Agent, this agreement and all the rights of the Agent thereunder shall immediately terminate.

24. Agent agrees to cover his employees and property with all necessary fire, theft, liability and compensation insurance with proper policies, to be approved by Company, and further agrees to take out such other insurance as Company shall deem necessary, all to be paid for by Agent, and which shall be included as an expense against his said business.

25. The Agent agrees that he will not at any time during the life of this agreement mortgage, hypothecate, pledge or seek to encumber any merchandise, personal property or equipment in his possession consigned to him by the Company.

26. Agent agrees that he will at all times conduct his business in accordance with and conform to all municipal, county, state and federal statutes, laws, ordinances, regulations and executive orders. [27]

27. It is agreed that the laws of the State of California shall govern any and all questions that at any time may arise concerning the validity, construction or interpretation of this agreement, or any provision thereof, and the parties hereto agree that should any civil action be filed upon this agreement, or for any violation thereof, that the same shall be filed in the Superior Court of the State of California, in and for the County of Alameda, which said Court is hereby given exclusive jurisdiction of any such action. Time is expressly agreed to be of the essence thereof.

28. A waiver by the Company of any branch or any term or condition of this agreement shall not be construed in any way as a waiver of a further, like, or other breach of this agreement.

29. The Company reserves the right to interview and be satisfied with and approve all persons employed by the Agent in his territory, and the Agent agrees that he will not employ any person without first securing the approval of said Company. Agent agrees to discharge any person employed unsatisfactory to Company, on demand.

30. The Agent agrees to be responsible for all accounts served in his territory, for the collection of all accounts in his territory, and for all men working for and under him in said territory.

31. The Agent further agrees that for a period of three years after the termination of this agreement, or his period of employment, he will not, directly, or indirectly, communicate or divulge to or make use of for the benefit of any person, partnership or corporation any of the trade secrets, formulas, processing methods of the Company, or the names, addresses or requirements of any of the customers of the Company, or any other information related [28] to the Company's business which he may have acquired or learned during his employment. The Agent further agrees that he will not, either as an employee, employer or otherwise, canvass, solicit or cater to any of the customers of the Company, which he may know of because of his employment by said Company.

32. The Agent further agrees that all trade secrets, formulas, methods, processes and the like, and all customers' lists, operation data, discovered, acquired or prepared during his employment, and connected with the business of the Company shall be the sole property of the Company.

33. The Agent further agrees that he will submit the necessary information for obtaining a surety bond in such proportion as the Company may require, and furnish said bond upon demand of the Company. The Company agrees to pay the premium on said bond.

34. Should the Agent die during the life of this agreement and leave a will designating a person whom he desires to have carry on the services provided for in this contract, and providing any condition or limitation upon same in said will, the Company agrees that it will enter into a contract similar in form and effect to the within contract with such person, and changed only by the conditions or limitations provided in said will, providing the new man is satisfactory to the Company.

35. The Company shall be the exclusive judge of whether the Agent is complying with all the terms and conditions of this agreement, and its decision in this matter shall be final and conclusive as to that fact.

36. This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto. [29]

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

PARAMOUNT PEST
CONTROL SERVICE,
a Corporation,

By /s/ G. H. FISHER.

/s/ CHARLES P. BREWER,
Agent. [30]

[Title of District Court and Cause.]

MOTION FOR RESTRAINING ORDER

Comes Now the plaintiff above named, appearing by its attorneys, Kenneth C. Gillis, F. Leo Smith and Robert R. Rankin, and move the above-entitled court for an order restraining said defendants from a continued operation and practice, as more fully described in the Complaint herein; and

Moves that this Court issue an Order to Show Cause, fixing a time and place for hearing, why the defendants and each of them should not be so restrained.

This motion is based on

- (1) The verified Complaint filed herein and reference to which is hereby made;
- (2) The affidavit of T. C. Sibert, President of the plaintiff corporation, and attached to this Motion;
- (3) The Rules of Civil Procedure for the District Courts of the United States; and
- (4) On statutes and authorities in interpretation thereof.

Dated at Portland, Oregon, this 22nd day of October, 1947.

KENNETH C. GILLIS,
F. LEO SMITH,
ROBERT R. RANKIN,
Attorneys for Plaintiff.

[Endorsed]: Filed October 24, 1947. [31]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
RESTRAINING ORDER

State of California,
County of Alameda—ss.

I, T. C. Sibert, being first duly sworn, depose and say:

That I am the President of the plaintiff corporation; that I have read and verified the Complaint herein; that I know its contents and the allegations therein contained, and that the same are all true as I verily believe;

That the defendants, in the manner in said Complaint described, are doing substantial damage to the plaintiff, and three of them were under contract to refrain from doing the very things they are doing, and the other two defendants have knowledge. I verily believe, of all that has transpired and yet continue to aid and abet the other defendants in the conspiracy alleged, and do so for their joint and several enrichment and the acquiring of plaintiff's business, as more fully detailed and set forth in said complaint; that knowing the character of the defendants involved and their program and their past practice, I firmly believe that they will continue in this course of conduct to the plaintiff company's irreparable damage unless they are restrained by this court; that a temporary restraining order is requested for the purpose of protecting this busi-

ness, to last until the hearing of this case upon the merits.

Further, deponent sayeth not.

/s/ T. C. SIBERT.

Subscribed and sworn to before me this 22nd day of October, 1947.

[Seal] /s/ KENNETH C. GILLIS,
Notary Public in and for the County of Alameda,
State of California.

My Commission expires December 8, 1950.

[Endorsed]: Filed October 24, 1947. [32]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Upon reading plaintiff's verified complaint filed herein and its motion for a temporary restraining order pendente lite, together with the affidavit attached to said motion, and the Court being satisfied that there is reason for the issuance of this Order to Show Cause herein;

It is now hereby Ordered that defendants, and each of them, above named appear before this Court at its courtroom in the United States Court House at Main Street, between Sixth Avenue and Broadway, in the City of Portland, County of Multnomah, State of Oregon, on Monday, the 17th day of No-

vember, 1947, at the hour of 10 o'clock a.m. of that date, to then and there show cause, if any they have, why a preliminary injunction should not be issued in favor of the plaintiff and against the defendants, and each of them, pending the hearing of this suit on the merits, which order shall enjoin and restrain said defendants, and each of them, during the pendency of this action, together with any members of their association, their agents, officers, representatives and employees, from directly or indirectly doing the matters and things as alleged in said complaint, a copy of which is served concurrently herewith, and particularly from soliciting and serving customers of plaintiff, persuading or inducing customers to break their contracts of service with the plaintiff, and from interfering with the business of plaintiff as established in Oregon, as in said complaint described, prior to August 1, 1947, or from violating their agreements, or aiding or abetting in the violation of those agreements, to refrain from competition for a period of three (3) [33] years after the cessation of employment, and, further, from the use of any of plaintiff's methods, equipment or products, or the information gleaned from their previous service with plaintiff in the service of defendants' customers; and

It is further Ordered that a copy of this Order to Show Cause be served by the United States Marshal upon said defendants at the time of the service of the complaint herein, and that said copy of this

Order be certified to by one of the attorneys of record herein.

Done in open court at Portland, Oregon, this 24th day of October, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed October 24, 1947. [34]

[Title of District Court and Cause.]

ANSWER OF CHARLES P. BREWER TO
INTERROGATORIES

State of Oregon,
County of Multnomah—ss.

I, Charles P. Brewer, being first duly sworn, make the following answers to the interrogatories propounded in the above case:

Answer to Interrogatory (a)

(I) The contract of July 1, 1946, attached as Exhibit 1, is genuine but the contract was modified after the date thereof so as to provide that the net profits would be divided between the company and the agent on an equal basis.

(II) I know of no such agreement between the plaintiff and any of the defendants. I believe the defendant Raymond Rightmire signed such an

agreement with a partnership between T. C. Sibert and G. H. Fisher, doing business as Paramount Pest Control Service. The certificate of partnership was filed on March 1, 1945 in Book 41, Page 293 of the Assumed Name Business Certificates of Multnomah County, Oregon.

(III) The letter of resignation is genuine.

Answer to Interrogatory (b)

(I) I am serving customers or patrons for pest control service who were formerly served by plaintiff for pest control and some of whom were under contract with plaintiff for [35] similar service. The other defendants are employed by me and as such employees serve customers or patrons for pest control service who were served by the plaintiff for pest control and some of whom were under contract with plaintiff for similar service. The balance of the statement is untrue.

(II) The statement is true.

Answer to Interrogatory (c)

A list of the customers and patrons is annexed to this answer and marked Exhibit A.

/s/ CHARLES P. BREWER.

EXHIBIT A

Fischer Flouring Mills.....	Portland
Pacific Coast Fruit Co.....	“
Oregon Flower Growers, Ass'n.....	“
Sunshine Biscuit Co.....	“
Sav-On-Drug Co.....	“
Hi-Spot Cafe.....	Camas, Wn.
Home Town Bakery.....	“ “
Crown Willamette Inn.....	“ “
Albers Milling Co.....	Portland
Hawthorne Food Mkt.....	“
Lairds Red & White.....	“
Dizzy Whiz Cafe.....	“
Hudson Duncan Cafe.....	“ & Branches
39th. & Division Cafe.....	“
Rowes Coffee Shop.....	“
Flynns Fine Food.....	“
Sellings Red & White.....	Gresham
Hickman Pharmacy.....	Vancouver, Wn.
Plaza Theatre.....	Portland
Ideal Dairy.....	Portland
Nite & Day Mkt.....	Vancouver, Wn.
Columbia Food Stores.....	Portland & Branches
Zimmerman Feed.....	Yamhill, Ore.
Cozy Cafe.....	Newberg
Pacific Meat Co.....	Portland
Imlay & Sons.....	Aloha
Imlay Feed & Seed.....	Reedville
Perfection Bakery.....	Hillsboro
West Lynn Grocery.....	West Lynn, Ore.
Harolds Grocery.....	Portland
Harvest Milling Co.....	“
Grand Ave. Cafe.....	“
Dairy Co-op.....	“
Lews Mkt.....	Oregon City
Safeway Stores, Inc.....	Portland & Branches
Swartz Transfer.....	Portland
Portland Provisioner.....	“
Transportation Club.....	“
Smith Grocery.....	Hillsboro
Whistlin' Pig Cafe.....	Portland

Rivieria Cafe.....	Newberg
Standard Market	Oregon City
Harold & Dans Cafe.....	Portland
House of Good Shepherd	Portland
Brookside Grocery.....	Vancouver, Wn.
Ralphs Cafe.....	Cascade Locks
Sunset Cafe.....	Hood River
Browns Farm Store.....	Vancouver, Wn.
Eds Feed & Seed	Hood River
Foodland Grocery	Vancouver, Wn.
Little Onion Cafe.....	Hood River
Hood River Cafe	"
9th. St. Super Mkt.....	The Dalles
Cascade Baking Co.....	" "
Kerr Gifford & Co.....	" "
McHales Grocery	" "
Hotel Dalles Coffee Shop.....	" "
Star Theatre.....	Goldendale, Wn.
Grows Market.....	" "
Reliance Creamery.....	" "
Adams Market	Arlington
Central Mkt.....	Heppner, Ore.
Heppner Cafe.....	"
Red & White Store.....	"
Elkhorn Cafe	"
Aikens Tavern	"
Heppner Laundry	"
Yarnell Tavern.....	Lexington
Lexington Cafe.....	"
Farm Bureau Co-op.....	Hermiston
Purity Bakery	Pendleton
Pendleton Baking.....	"
Pacific Fruit & Produce.....	La Grande
Inland Poultry & Feed.....	"
Stein Club.....	"
Portland Cafe.....	"
7 up Bottling Co.....	"
The Stockman.....	"
Stein Coffee Shop.....	"
Sacajua Coffee Shop.....	"
Royal Cafe.....	"
McCord Grocery.....	"

Union Bakery.....	Union, Oregon
Pacific Fruit & Produce.....	Baker, Oregon
C. C. Anderson.....	“
The Provisioner.....	“
Stockmans Exchange.....	“
Stanfords Store.....	Weiser, Idaho
Washington Hotel.....	“
Idaho Candy.....	Boise, Idaho
Geiser Grand Hotel.....	Baker, Oregon
Harney Valley Bakery.....	Burns
Hudson Duncan Co.....	Bend, Oregon
Todds Bakery.....	The Dalles
Farmers Market.....	“ “
Sigmans Food Stores.....	Hermiston
Jacksons Food Market.....	Baker, Oregon
Killgores Dairy.....	Redmond
Bond St. Food Market.....	Bend
Central Ore. Co-op. Creamery.....	Redmond
American Bakery.....	Nampa, Idaho
Electric Bakery.....	“
Hound Pup Cafe.....	Cascade Locks
The Dalles Meat Market.....	The Dalles
Lauderbaek Market.....	White Salmon, Wn.
Pinky's Union St. Market.....	The Dalles
Bill Rivers.....	La Grande
Baker-LaGrande Groc. Co.....	“
Elks Club.....	Baker
Valley Dairy.....	“
St. Charles Hospital.....	Bend
Nampa Whse. Grocery.....	Nampa, Idaho
City Market.....	Burns, Oregon
Goldendale City Dump.....	Goldendale, Wn.
Gem State Bakery.....	Payette, Idaho
Campas Market.....	Corvallis
Miles McKay.....	Mareola, Oregon

Griggs Market.....	Klamath Falls
Cottage Bakery.....	Cottage Grove, Oregon
Ceeils Cafe.....	“ “
Burlingham-Meeker	Amity, Oregon
Tillamook-Amity Co-op.	“
Smith Baking Co.....	Salem
Pacific Fruit & Produce.....	Albany
Kelleys Feed.....	“
Smoke House.....	Glendale
Albany Feed & Seed.....	Albany
Albany Laundry.....	“
Glendale Hotel	Glendale
Burlingham-Meeker	Rickreal
Burlingham-Meeker R.F.D.	Amity
Glendale Club	Glendale
Pacific Fruit & Produce.....	Corvallis
Burlingham-Meeker	Shedd
Creech Thrift Store.....	Glendale
Henningers Market	Roseburg
Howard Jones Feed.....	Hubbard
F. W. Woolworth.....	Medford
Pacific Fruit & Produce.....	“
Aurora Whse. Inc.....	Aurora
Woodburn Feed & Seed.....	Woodburn
Barkus Feed Mill.....	Salem

State of Oregon,
County of Multnomah—ss.

I, Charles P. Brewer, being first duly sworn, depose and say that I have read over the above and foregoing answers to the interrogatories and know the contents thereof and that the answers made by me are true except that where any answers are made upon information or belief the same are true according to my best knowledge, information and belief.

/s/ CHARLES P. BREWER.

Subscribed and sworn to before me this 14th day of November, 1947.

[Seal] E. F. BERNARD,
Notary Public for Oregon.

My Commission Expires 1/12/1941.

Service of the foregoing Answer of Charles P. Brewer to Interrogatories is hereby accepted this 14th day of November, 1947.

/s ROBERT R. RANKIN,
Of attorneys for Plaintiff.

[Endorsed]: Filed November 15, 1947. [40]

[Title of District Court and Cause.]

ANSWER OF ROSALIE BREWER
TO INTERROGATORIES

State of Oregon,
County of Multnomah—ss.

I, Rosalie Brewer, being first duly sworn, make the following answers to the interrogatories propounded in the above case:

Answer to Interrogatory (a)

(I) The contract of July 1, 1948, attached as Exhibit 1 is genuine, but the contract was modified after that date to provide that the net profits would be divided on an equal basis.

(II) I never signed such an agreement, although I am informed that Ray Rightmire signed such an agreement with a partnership.

(III) The letter of resignation is genuine.

Answer to Interrogatory (b)

(I) I am not soliciting or serving customers or patrons for pest control service who were formerly under contract with plaintiff for similar service or who were served by plaintiff for pest control. I have no knowledge as to what the other defendants are doing.

(II) The statement is true.

Answer to Interrogatory (c)

(1) I have not served any customers, but I have seen [41] Exhibit A attached to the answers of Charles B. Brewer and I believe the list to be correct.

/s/ ROSALIE BREWER. [42]

State of Oregon,
County of Multnomah—ss.

I, Rosalie Brewer, being first duly sworn, depose and say that I have read over the above and foregoing answers to the interrogatories and know the contents thereof and that the answers made by me are true except that where any answers are made upon information or belief the same are true according to my best knowledge, information and belief.

/s/ ROSALIE BREWER.

Subscribed and sworn to before me this 14th day of November, 1947.

[Seal] /s/ E. F. BERNARD,

Notary Public for Oregon.

My Commission Expires: 1/12/1951.

Service of the foregoing Answer of Rosalie Brewer to Interrogatories is hereby accepted this 14 day of November, 1947.

/s/ ROBERT R. RANKIN,

Of Attorneys for Plaintiff.

[Endorsed]: Filed November 15, 1947. [43]

[Title of District Court and Cause.]

ANSWER OF EARL MERRIOTT
TO INTERROGATORIES

State of Oregon,
County of Multnomah—ss.

I, Earl Merriott, being first duly sworn, make the following answers to the interrogatories propounded in the above case:

Answer to Interrogatory (a)

(I) I never saw the contract of July 1, 1946, attached as Exhibit 1 before I read it in the complaint that was served on me in the case filed in the Circuit Court of Multnomah County, Oregon. I understand Mr. Brewer says the Exhibit 1 is a copy of the original and I have no reason to dispute that fact.

(II) I never saw any such agreement and never signed any.

(III) I never saw the letter of resignation and am not able to say whether the letter is genuine.

Answer to Interrogatory (b)

(I) I am employed by Charles P. Brewer and as such serve customers or patrons for pest control service who were formerly served by plaintiff for pest control. I formerly solicited customers who were served by plaintiff for pest control but have not done so since the 1st day of November, 1947.

(II) The answer to the statement is true.

Answer to Interrogatory (c)

I have no list of the patrons and customers served but I have checked over Exhibit A attached to the answers of Charles P. Brewer and I believe the list to be correct.

/s/ EARL MERRIOTT. [45]

State of Oregon,
County of Multnomah—ss.

I, Earl Merriott, being first duly sworn, depose and say that I have read over the above and foregoing answers to the interrogatories and know the contents thereof and that the answers made by me are true except that where any answers are made upon information or belief the same are true according to my best knowledge, information and belief:

/s/ EARL MERRIOTT.

Subscribed and sworn to before me this 14th day of November, 1947.

[Seal]

E. F. BERNARD,

Notary Public for Oregon.

My Commission Expires: 1/12/1951.

Service of the foregoing Answer of Earl Merriott to Interrogatories is hereby accepted this 14th day of November, 1947.

/s/ ROBERT R. RANKIN,

Of attorneys for Plaintiff.

[Endorsed]: Filed November 15, 1947. [46]

[Title of District Court and Cause.]

ANSWER OF RAYMOND RIGHTMIRE TO
INTERROGATORIES

State of Oregon,
County of Multnomah—ss.

I, Raymond Rightmire, being first duly sworn, make the following answers to the interrogatories propounded in the above case:

Answer to Interrogatory (a)

(I) I never saw the contract of July 1, 1946 attached as Exhibit I before I read it in the compliant that was served on me in the case filed in the Circuit Court of Multnomah County, Oregon. I understand Mr. Brewer says the Exhibit 1 is a copy of the original and I have no reason to dispute that fact.

(II) I at one time signed such an agreement but not with the plaintiff. At the time I signed the agreement I was employed by a partnership.

(III) I never saw the letter of resignation and am not able to say whether the letter is genuine.

Answer to Interrogatory (b)

(I) I am employed by Charles P. Brewer and as such serve customers or patrons for pest control service who were formerly served by plaintiff for pest control. I formerly solicited customers who were served by plaintiff for pest control but have not done so since the 1st day of November, 1947.

(II) The answer to the statement is true.

Answer to Interrogatory (c)

I have no list of the patrons and customers served but I have checked over Exhibit A attached to the answers of Charles P. Brewer and I believe the list to be correct.

/s/ RAYMOND RIGHTMIRE.

State of Oregon,
County of Multnomah—ss.

I, Raymond Rightmire, being first duly sworn, depose and say that I have read over the above and forgoing answers to the interrogatories and know the contents thereof and that the answers made by me are true except that where any answers are made upon information or belief the same are true according to my best knowledge, information and belief.

/s/ RAYMOND RIGHTMIRE.

Subscribed and sworn to before me this 14th day of November, 1947.

[Seal] E. F. BERNARD.

Notary Public for Oregon.

My Commission Expires 1-12-1951.

Service of the foregoing Answer of Raymond Rightmire to Interrogatories is hereby accepted this 14th day of November, 1947.

/s/ ROBERT R. RANKIN,

Of Attorneys for Plaintiff.

[Endorsed]: Filed November 15, 1947. [49]

[Title of District Court and Cause.]

AFFIDAVIT IN RESPONSE TO ORDER TO
SHOW CAUSE

State of Oregon,
County of Multnomah—ss.

I, Charles P. Brewer, being first duly sworn, depose and say:

I am one of the defendants in the above entitled action and make this affidavit in response to the order to show cause issued in the action as to why a preliminary injunction should not be issued in favor of the plaintiff and against the defendant.

I formerly resided in Oakland, California, and about March 1, 1946, I was employed by a partnership doing business under the name of Paramount Pest Control Service. The partners were T. C. Sibert and G. W. Fisher, and this was the same partnership which filed an assumed name business certificate on March 1, 1945, in Book 41, Page 293, of the assumed name business certificates, of Multnomah County, Oregon. My duties with the partnership were to solicit customers and service their places of business. I was at no time furnished with any formulas, processes or secrets. The partner bought poison from wholesalers which could be bought on the market by any person or business concern. I was paid a salary of \$200.00 a month by the partnership.

In April, 1946, I was sent by the partnership to take charge of the business in the state of Oregon

and was promised a salary of \$250.00 per month and expenses. I stopped at the [50] Roosevelt Hotel in Portland. H. W. Hilts, on behalf of the partnership, brought a quantity of poison and extermination supplies to my room in the Roosevelt Hotel and left them there and immediately returned to California. No place of business was furnished me and inasmuch as a guest in a hotel could only remain for six days at that time, it was necessary for me to move the business and exterminator's supplies from hotel to hotel with me. I had been promised permanent employment on a salary by the partnership and relying on such representations, I sold my home in Oakland, California, and bought a home in Portland, Oregon.

About July 1, I was informed that a corporation was about to be formed in California, that the business in Oregon was in the red, and it was necessary that "it be dumped," and that I would have to sign a contract with the corporation or my employment would be at an end. Accordingly, I signed the instrument of which Exhibit 1 attached to the plaintiff's complaint is a copy. It will be noted that the instrument does not bear the official designation of G. H. Fisher, who signed on behalf of the corporation, and it is my information that at the time the instrument was signed, the corporation had not been organized. The corporation never qualified to do business in the state of Oregon until sometime in August, 1947.

After the signing of the instrument, I devoted my best energies to building up a business but by Nov-

ember 1, I found that there could be no profit to me under the terms of the agreement. Accordingly, I drove with my wife to California and consulted with Mr. Sibert. I told him that it would be necessary for me to quit the business and he said that he wished me to stay, and he, at that time, agreed to a modification of the contract so that I would receive fifty per cent of the net profits. I returned to Portland, and because of the modification agreed upon and not otherwise, continued in my [51] efforts to build up the business.

About March 1, Mr. Hilts delivered to me a statement or purported statement of my account with the company from January 1, 1947, which was cast not on the basis that I was to receive fifty per cent of the net profits, but on the percentages set up in the written contract. I immediately told Mr. Hilts that if the agreement was not to be lived up to, I was through and he left for California, and on his return wrote me a letter saying that I was right about the modification and that I was to receive fifty per cent of the net profits.

In June, 1947, Mr. Hilts came to Portland, and asked me to borrow money to pay to the company. I told him that I could not do so and shortly Mr. Sibert called me from Seattle about borrowing money to pay to the company and I told him the same thing. Mr. Sibert and Mr. Hilts both then came to Portland and went with me to the Bank of California. They explained to Mr. Ridehalch and told Mr. Ridehalch that I was the entire owner of the business in Portland and of all the supplies,

equipment and so forth, and that the only interest they had was in some furniture, and that I was entitled to borrow on the strength of a financial statement showing me the owner. I refused to borrow any money because Mr. Sibert had told me that he would never press me for money until the business in Oregon was on a paying basis. They then told me that beginning July 1, I would have to do business on the basis of the old written agreement and not on the basis of an equal division of the net earnings. I told them that it would be impossible for me to proceed on that basis, and I sent in my letter of resignation because of the violation and breach by the plaintiff of their agreement with me as modified.

I have repeatedly requested that I be furnished an audit of my account based on an equal division of the net profits but I have never been furnished such an audit. The company [52] refused to furnish me the necessary equipment to carry on the business and it was necessary for me to purchase much of the equipment myself and out of my own funds.

I have no property in my possession belonging to the plaintiff. All property belonging to the plaintiff was in a warehouse located at 15th and N. W. Marshall Streets, Portland, Oregon, and in the office at 519 W. Park Street, Portland, Oregon. I told the warehouseman to deliver any of the property there to the plaintiff and the plaintiff has taken possession of the office equipment.

The plaintiff has in its possession equipment and supplies purchased by me and belonging to me to

the amount and value between \$1,500.00 and \$2,000.00.

After my resignation I went into the pest control business in Oregon as Sibert and Fisher had breached their agreement made with me when I was sent to Oregon and as a result of which agreement, I sold my home in California and bought one in Portland, Oregon, and after the corporation was formed, it was my understanding that this same Sibert became President of the corporation. I was putting my time, money and energy in an attempt to build the business in Oregon and when it suited the purpose of the corporation, they repudiated their agreement with me to divide the net profits on an equal basis.

I am serving many customers that were never serviced by the plaintiff and some of the customers who were formerly serviced by the plaintiff have sought my services as they were dissatisfied with the service rendered by the plaintiff. I did solicit some of the plaintiff's customers but have ceased doing so and do not intend to solicit their customers in the future.

Prior to August 1, 1947, the plaintiff was sending men as far as Boise, Idaho, to service customers. About [53] September 1, they abandoned this service and a number of the plaintiff's customers which I am servicing are in the district which the plaintiff abandoned.

It was definitely agreed between Mr. Sibert and me that the modification of the contract to the effect

that the net profits were to be divided equally between the plaintiff and me would not be for a limited period of time, but would continue for the duration of the contract.

[Seal] CHARLES P. BREWER.

Subscribed and sworn to before me this 15th day of November, 1947.

E. F. BERNARD,

Notary Public for Oregon.

My Commission Expires 1-12-1951.

Service accepted this 15th day of November, 1947.

ROBERT R. RANKIN,

Attorney for Plaintiff

[Endorsed] Filed November 15, 1947. [54]

[Title of District Court and Cause.]

AFFIDAVIT COUNTER TO
CHARLES P. BREWER'S AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, DeGray S. Brooks, being first duly sworn, depose and say:

That I am manager of Paramount Pest Control Service, a corporation, located at Portland, Oregon, and have been such since the 15th day of August, 1947, and consequently I am familiar with the customers who have cancelled their service with the plaintiff and with the accounts previously on its books.

That I have read the answers of Charles P. Brewer to the interrogatories herein and have analyzed the list of accounts which he has submitted, as they appear on the books of the plaintiff, and from his own statement I advise the Court that he lists some one hundred and forty-two accounts.

But under his listing he makes such generalization as Safeway Stores, Inc., whereas this includes three warehouses and fifty-one stores which are not detailed in his listing, but which, through his association with the head of that department, he now serves in their entirety. He serves Hudson-Duncan, listed as three stores, whereas there are six, and Columbia Food Stores, listed as one, whereas there are nine stores served by him; so his actual acquisition of the business of Paramount is much greater than shown on his listing.

To analyze further his statement, it appears he has taken one hundred and sixty-five accounts from Paramount Pest Control Service, leaving some forty of which we have no records. This does not necessarily mean that Paramount did not have these accounts before, because I personally instructed Charles P. Brewer to look after [55] Sigman's Food Stores. The Sigman Food Stores were under the plaintiff's service in Washington and I wrote Mr. Brewer to take care of them in Oregon several times and heard nothing further from him, but they now appear on his list attached to his Answer as stores he serviced and which should have been, if he had properly served the plaintiff, upon its list and served by plaintiff.

That so far as the employees Rightmire and Duncan are concerned, while they may have signed the original agreements with the partnership, all of these contracts were sold and transferred to the corporation and were continued between the individual employee and the corporation thereafter, and the employees may never have known any change in management or obligation and continued as they had previously, but this they learned in the natural course of administration.

In further answer to Charles P. Brewer's affidavit, in response to the Order to Show Cause, he says that the customers formerly served by the plaintiff has sought his service because dissatisfied with that of the plaintiff (pages 4 and 5). He was familiar with Paramount and its service in this state during all of that period of time and if there was any dissatisfaction with plaintiff's service, it was due to Brewer's action as the franchised agent of plaintiff in this state. His statement that he does not intend to solicit plaintiff's customers in the future is because he has, through his action, practically acquired many, if not all, and at least the most substantial of plaintiff's accounts, so his promise to refrain from further solicitation is a nullity so far as the business of the plaintiff is concerned.

Attached hereto is a list of plaintiff's accounts, with their contract number, name of the business and its location, which also appear in the defendant's claim of business, marked "Exhibit A" and incorporated in this affidavit to show the extent of the defendants' acquisition of plaintiff's business.

Further, deponent sayeth not.

DeGRAY S. BROOKS.

Subscribed and sworn to before me this 17th day of November, 1947.

[Seal] ZELDA E. MILLER,
Notary Public for Oregon.

My Commission expires June 11, 1949.

Service of the foregoing Counter affidavit by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 17th day of November, 1947.

/s/ E. F. BERNARD,
Attorney for Defendants.

[Endorsed]: Filed November 17, 1947. [57]

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[Title of District Court and Cause.]

PRELIMINARY MEMO

Until there is disclosure in more detail of the secret nature of the processes, I do not feel that I should issue an injunction. An early pre-trial and trial date can be obtained through Clerk DeMott.

Dated November 18, 1947.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed November 18, 1947. [58]

[Title of District Court and Cause.]

ORDER

The above-entitled action coming on to be heard on the motion of the plaintiff for a temporary restraining order and on the order to show cause why a preliminary injunction should not be issued, the plaintiff appearing by Robert R. Rankin and F. Leo Smith, of its attorneys, and the defendants Charles P. Brewer, Rosalie Brewer, Raymond Rightmire and Earl Merriott appearing by their attorneys, Plowden Stott and E. F. Bernard,

It is Ordered by the court that the motion for a restraining order be and hereby is denied and that a preliminary injunction do not issue.

Dated this 19th day of November, 1947.

CLAUDE McCOLLOCH,

District Judge.

[Endorsed]: Filed November 19, 1947. [59]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS CHARLES P. BREWER, ROSALIE BREWER, RAYMOND RIGHTMIRE and EARL MERRIOTT

For their answer to the plaintiff's complaint the defendants Charles P. Brewer, Rosalie Brewer, Raymond Rightmire and Earl Merriott admit, deny and allege as follows:

First Defense

1. The defendants admit Paragraph numbered I of the complaint except the defendants deny that they have performed any unlawful conduct.

2. The defendants admit Subdivision (a) and (b) of Paragraph numbered II of the complaint save and except the defendants deny that the plaintiff has been engaged in the business described in the State of Oregon.

The defendants deny Subdivision (c) and (d) of Paragraph numbered II of the complaint.

3. The defendants admit that the defendant Charles P. Brewer and the plaintiff signed an agreement of which Exhibit numbered One, attached to the plaintiff's complaint, is a copy. The defendants admit that thereafter the agreement was modified to provide so that Paragraph numbered 5 of the agreement would be eliminated and that in lieu thereof the plaintiff and the defendant Charles P. Brewer would each be entitled to one-half of the net profits from the business after payment of all expenses. The defendants further admit that the defendant [60] Charles P. Brewer on or about the 6th day of February, 1947 paid the plaintiff the sum of \$250.00; and on or about the 6th day of March, 1947 the sum of \$250.00; and on or about the 13th day of March, 1947 the sum of \$494.25; and the sum of \$259.61 on or about July 9, 1947. The defendants further admit that the plaintiff agreed to send a salesman and service man from its main office at Oakland, California to eastern Oregon to build up

the business and that the plaintiff would pay the salaries and expenses thereof in the first instant, and that any profit or loss in expense in said venture would be shared equally between the plaintiff and the defendant Charles P. Brewer.

The defendants further admit that the defendant Raymond Rightmire is a resident of and an inhabitant in the State of Oregon and that the defendant Rosalie Brewer is now and at all times mentioned was the wife of the defendant Charles P. Brewer and a resident of and an inhabitant in the State of Oregon and assisted Charles P. Brewer in his business. The defendants admit that the defendant Earl Merriott is now and at all times mentioned in the complaint has been a resident of and an inhabitant in the State of Oregon and was employed by the plaintiff through the defendant Charles P. Brewer.

Save and except as herein expressly admitted, the defendants deny Paragraph numbered III of the complaint and the whole thereof.

4. The defendants deny Paragraph numbered IV of the complaint and the whole thereof.

5. The defendants deny Paragraph numbered V of the complaint and the whole thereof save and except the defendants admit that the defendant Charles P. Brewer signed the letter, a copy of which is set forth in Subdivision (1) of Paragraph V.

6. The defendants deny Paragraphs numbered VI, VII and VIII of the complaint and the whole thereof. [61]

Second Defense

About the month of November, 1946 the plaintiff and the defendant Charles P. Brewer agreed that the contract of which Exhibit One, attached to the plaintiff's complaint, is a copy should be changed and modified as of the date of the execution thereof and continuing for the full term of the contract to this effect, that Paragraph 5 of the contract should be eliminated and that in lieu thereof the plaintiff and the defendant Charles P. Brewer should each receive fifty per cent of the net profits of the operation of the business after the payment of all expenses incidental to the operation of the business. The plaintiff and the defendant Charles P. Brewer from that time on continued to operate under the agreement as modified until about the month of July, 1947 when the plaintiff notified the defendant Charles P. Brewer that it would no longer continue the performance of the contract as modified and that the defendant Charles P. Brewer would from that time on be required to pay to the plaintiff twenty per cent of the gross business done by the defendant Charles P. Brewer. For that reason and because of the plaintiff's repudiation by the plaintiff of the contract as modified, the defendant Charles P. Brewer wrote his notice of resignation as set forth in Paragraph numbered V of the complaint.

Counter-Claim

That when the employment of the defendant Charles P. Brewer was terminated, as set forth in the Second Defense of this answer, the defendant

Charles P. Brewer turned over to the plaintiff supplies and equipment belonging to him used in connection with the business under the agreement of the plaintiff that it would pay him the reasonable value thereof together with all sums which might be due to the defendant Charles P. Brewer by reason of his performance of the contract as modified. [62] That there is due and owing to the defendant Charles P. Brewer from the plaintiff the sum of \$700.00 by reason of his performance of the contract as modified and that the reasonable value of the supplies and equipment belonging to the defendant Charles P. Brewer turned over by him to the plaintiff is in the sum of \$1350.00. By reason thereof the plaintiff is indebted to the defendant Charles P. Brewer in the sum of \$2050.00.

Wherefore, the defendants pray that the plaintiff's complaint be dismissed and that they have and recover from the plaintiff their costs and disbursements. And the defendant Charles P. Brewer prays that he have the judgment of \$2050.00 against the plaintiff and for his costs and disbursements.

PLOWDEN STOTT,
E. F. BERNARD.

Service of the foregoing Answer of Defendants Charles P. Brewer, Rosalie Brewer, Raymond Rightmire and Earl Merriott is hereby acknowledged this 21 day of November, 1947.

/s/ ROBERT R. RANKIN,

Of attorneys for Plaintiff.

[Endorsed]: Filed November 24, 1947. [63]

[Title of District Court and Cause.]

REPLY TO COUNTER-CLAIM

For Reply to the Counter-claim of defendant, Charles P. Brewer, plaintiff alleges:

Denies said counter-claim and each allegation and sum therein alleged; and alleges the plaintiff has either paid or given credit in its accounting as alleged in its complaint for any and all property or sums due from plaintiff to said defendant.

Wherefore plaintiff prays for the relief as alleged in its complaint.

KENNETH C. GILLIS,
F. LEO SMITH,
/s/ ROBERT R. RANKIN.

United States of America,
District of Oregon—ss.

Due service of the foregoing reply is hereby admitted in Portland, Oregon, this 24th day of November, 1947.

/s/ E. F. BERNARD,
Of Attorneys for Defendants.

[Endorsed]: Filed November 24, 1947. [64]

In the District Court of the United States
for the District of Oregon

Civil No. 3936

PARAMOUNT PEST CONTROL SERVICE, a
corporation,

Plaintiff,

vs.

CHARLES P. BREWER, et al.,

Defendants.

MEMORANDUM OPINION

There are equities on both sides in this case, but it seems to me the controlling factor is the time element. If that question were presented singly, I would not think I should enjoin defendant generally from re-engaging in the pest control business; but, if this were August 1947, I might feel that defendant should be restrained from doing business with plaintiff's former customers, as customers' lists are protected by the law.

Considerable time has gone by and the interests of the 140 odd third parties who have continued service with the defendant have to be kept in mind. So an injunction will be denied.

As to damages, I may need to hear the parties further, if they are not able to adjust their differences.

Dated January 30, 1948.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed January 30, 1948. [65]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Be It Remembered that the above-entitled action came on regularly for trial, the plaintiff appearing by its officers and Robert R. Rankin, F. Leo Smith, and Kenneth C. Gillis, its attorneys, and the defendants Charles P. Brewer, Rosalie Brewer, Raymond Rightmire, and Earl Merriott (hereinafter referred to as the defendants) appearing in person and by Plowden Stott and E. F. Bernard, their attorneys. And the court having heard and considered the evidence and the arguments of counsel and having considered the matter and being now fully advised makes the following

FINDINGS OF FACT

I.

During the month of November, 1946 the plaintiff and the defendant Charles P. Brewer mutually agreed that Paragraph No. 5 of the Franchise Agreement between them—of which Exhibit 1 attached to the Complaint is a copy— [66] should be altered and modified and it was at that time agreed that instead of the agent paying the company twenty per cent (20%) of the gross business done by the agent, the net profits of the business beginning as of the 1st day of July, 1946 and continuing throughout the term of the Franchise Agreement should be divided between the plaintiff and the defendant Charles P. Brewer on a 50-50 basis.

II.

The defendant Charles P. Brewer continued the business under the agreement as modified and about the 30th day of June, 1947 the plaintiff in violation of its agreement repudiated the contract as modified and notified the defendant Charles P. Brewer that he would thereafter be required to pay the plaintiff twenty per cent (20%) of the gross business done by him.

III.

Because of the repudiation by the plaintiff of the contract as modified, the defendant Charles P. Brewer sent in his resignation as agent to be effective August 1, 1947.

IV.

Since the 1st day of August, 1947, the defendant Charles P. Brewer has engaged in the pest control business and has solicited some of the customers of the plaintiff and has been servicing upwards of one hundred customers of the plaintiff. The issuance of an injunction would deprive such persons of uninterrupted pest control service. The defendants Raymond Rightmire and Earl Merriott have been employed by the defendant Charles P. Brewer in his pest control business. [67]

V.

The plaintiff did not disclose to the defendant Charles P. Brewer or to any of the other defendants any receipts, formulae, or secret processes and *at* the defendant Charles P. Brewer has not used in his business any receipts, formulae or processes of the plaintiff.

VI.

~~The franchise referred to in the plaintiff's complaint, of which Exhibit 1 is a copy, is not fair and reasonable.~~

From the foregoing Findings of Fact the court makes the following

CONCLUSIONS OF LAW

Damages & costs to neither party

I.

~~The plaintiff is not entitled to an injunction against the defendants.~~

II.

~~A judgment should be entered against
for the sum of \$.....~~

Dated this 14th day of February, 1948.

CLAUDE McCOLLOCH,
United States District Judge.

Service of the foregoing Findings of Fact and Conclusions of Law is accepted this 12th day of February, 1948.

R. R. RANKIN,
By G. E. BIRNIE,
Of attorneys for Plaintiff.

[Endorsed]: Filed February 14, 1948. [68]

In the District Court of the United States
for the District of Oregon

No. Civ. 3936

PARAMOUNT PEST CONTROL SERVICE, a
corporation,

Plaintiff,

vs.

CHARLES P. BREWER, et al,

Defendants.

JUDGMENT

Be It Remembered that the above-entitled cause came on regularly for trial, the plaintiff appearing by its officers and Robert R. Rankin, F. Leo Smith, and Kenneth C. Gillis, its attorneys, and the defendants Charles P. Brewer, Rosalie Brewer, Raymond Rightmire and Earl Merriott appearing in person and by Plowden Stott and E. F. Bernard, their attorneys. And the court having heretofore signed Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed that an injunction against the defendants be and hereby is denied.

It Is Further Ordered, Adjudged and Decreed that the Complaint be dismissed without costs.

Dated this 14th day of February, 1948.

CLAUDE McCOLLOCH,

United States District Judge.

[Endorsed]: Filed February 14, 1948.

Entered in Docket February 14, 1948. [69]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Paramount Pest Control Service, a corporation, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on February 14, 1948, and the whole thereof.

Dated this 12th day of March, 1948.

KENNETH C. GILLIS,
ROBERT R. RANKIN,

Attorneys for Appellant, Paramount Pest Control Service, a Corporation.

[Endorsed]: Filed March 12, 1948. [70]

[Title of District Court and Cause.]

POINTS ON WHICH APPELLANT INTENDS TO RELY.

Appellant cites the following points on which it intends to rely for reversal of the judgment of the District Court of the United States for the District of Oregon, Honorable Claude McColloch, Judge, and claims said trial court Failed To:—

1. Find the appellant was engaged in Oregon in the business described in its Complaint and denied in the Answer.

Supporting Record: Complaint; Answer; Testi-

mony of T. C. Sibert, E. W. Bushing, C. Wendell Fisher, DeGray Brooks; and Exhibits.

2. Find all respondents had made and performed an unlawful conspiracy to (a) breach the valid written and subsisting contracts between appellant and respondents Charles P. Brewer, Raymond Rightmire and customers of appellant and (b) to deprive appellant of its established business in Oregon.

Supporting Record: Pleadings; Transcript of Testimony; exhibits and Respondents' Answers to Interrogatories.

3. Enjoin, generally, respondents and their representatives from continuing said conspiracy, including the interference with appellant's customers whether under contract or not; Specifically Enjoining Charles P. Brewer from violating his contract in connection with appellant's business and preventing him for a period of three years from August 1, 1947, from soliciting or serving appellant's customers; Specifically Enjoining respondent Raymond Rightmire for said period from working for any other pest control firm but appellant, and Issue both a temporary and permanent injunction in the Court's orders of November 18, 1947 and February 14, 1948.

Supporting Record: Pleadings, Answers to Interrogatories, Transcript of Testimony, Exhibits, Court's Memoranda of November 18, 1947 and January 30, 1948.

4. Find there was undue and unpaid to appellant the following sums of money and entering judgment therefor, to wit:

(a) Against respondent Charles P. Brewer, on agreements to pay for \$6,155.84.

Supporting Record: Exhibits 36, 39, 40, 40(a), 50, 51, 51(a) and testimony of Harold Hilts, Pleadings and Testimony.

(b) Against all respondents, jointly and severally, for damages, \$6,796.95.

Supporting Record: Exhibits 53, 54, 55; Pleadings and Testimony.

5. Enter judgment for costs in favor of appellant.

Supporting Record: Entire Record.

Dated this 16th day of March, 1948.

/s/ KENNETH C. GILLIS,

/s/ ROBERT R. RANKIN,

Attorneys for Appellant.

Service of the within Points on which Appellant intends to rely, by receipt of a duly certified copy thereof, is hereby accepted at Portland, Oregon, this 16th day of March, 1948.

/s/ E. F. BERNARD,

of Attorneys for Appellees.

[Endorsed]: Filed March 17, 1948. [72]

[Title of District Court and Cause.]

ORDER DIRECTING TRANSMITTAL OF
ORIGINAL EXHIBITS

This matter came on for hearing on motion of the plaintiff for an order directing that the original exhibits be sent to the appellate court in lieu of copies; and

It appearing to the Court that a Notice of Appeal and Bond has been filed herein and the Court being of the opinion that the Appellate Court shall have the original exhibits for inspection on such appeal;

It is hereby Ordered that all the original exhibits offered or received in evidence in this court and the deposition of Chas. P. Brewer (McC) be sent to the Circuit Court of Appeals for the Ninth Circuit, in lieu of copies thereof, and that the sending of said originals shall in no way be construed to indicate which of said exhibits shall or shall not be printed in the Transcript of Record on appeal.

Dated this 16th day of March, 1948.

CLAUDE McCOLLOCH,
Judge.

OK E F Bernard.

[Endorsed]: Filed March 17, 1948. [73]

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INDIVIDUAL *Recd*

TO THE BANK OF CALIFORNIA, N. A., PORTLAND, OREGON

NAME **Charles P. Brower**

EXHIBIT 77
3936

Married X
or
Single

BUSINESS **Paramount Pest Control Services, Inc.** 519 N.W. Park Ave. Portland, Ore

For the purpose of procuring credit from time to time with you for my negotiable paper or otherwise, I furnish the following as a true and accurate statement of my financial condition on **May 31**, 19**47**, which may hereafter be considered as representing a true statement of my financial condition unless written notice of change is given you.

ASSETS		LIABILITIES	
Cash on Hand	\$	Notes Payable:	
Cash in Bank of California	75.10	To Bank of California	-0-
Cash in First Nat Bank	75.00	To Other Banks	-0-
Total Cash	150.10	For Merchandise	-0-
Notes Receivable and Trade Acceptances (Good—Not Overdue)	-0-	To Relatives and Friends	-0-
Accounts Receivable (Good—Not Overdue)	3 624.56	To Others	-0-
Saleable Merchandise (how valued)	756.84	Accounts Payable:	
Raw Material (how valued)	-0-	For Merchandise	-0-
Cash Value of Life Insurance	-0-	To Relatives and Friends	-0-
		To Others Paramount Pest Cont.	2 759.63
		Trade Acceptances	
		Taxes Unpaid	159.42
		Borrowed on Life Insurance	
Total Current Assets	4 532.50	Total Current Liabilities	2 919.05
Real Estate and Buildings (as per Schedule on Back)	5 250.00	Mortgages or Liens on Real Estate	612.10
Machinery and Tools	1 085.77	Chattel Mortgages or Contracts (Covering _____) When Due _____	
Autos and Trucks	1 836.00	Other Liabilities (itemize below):	
Furniture and Fixtures	735.20	Depreciation	734.03
Investments in Stocks and Bonds (as per Schedule on Back)		Due to Employees	5.60
Notes, Trade Acceptances and Accounts Receivable (Past Due)	-0-	Total Liabilities	6 870.78
Other Assets (itemize below) personal furniture	2 100.00	NET WORTH	8,067.69
Total	15 536.47	Total	15, 536.47

CONTINGENT LIABILITIES

Notes Endorsed for Other Parties None

Notes and Accounts Receivable, Discounted or Sold and Not Included in Assets Enumerated Above None

Other Contingent Liabilities None

Specify any of above Assets pledged as collateral and the Liabilities for which they are security None

PROFIT AND LOSS ACCOUNT

Business Results for year ending 6/1/46 to 5/31/47	Gross Sales	\$33,394.30
Total Expenses for the Year	Gross Profits on Sales	\$10,015.14
Bad Debts charged off	Interest on Accounts	-0-
Depreciation charged off	Interest on Investments	-0-
Net Profit	Interest on Loans	-0-

OVER - CONTINUED ON REVERSE SIDE

Life Insurance Beneficiary is Rosalie Brewer Amount \$ 5000
 Fire Insurance on Machinery and Fixtures \$ 1500.00 Buildings \$ 4,000.00 Merchandise \$ 1000.00 Total \$ 6500.00
 Accident Insurance \$ 50,000 Liability Insurance \$ 100,000 to 200,000

Regular times for closing books and taking inventory... 6/30/47
 Is this statement based on inventory estimate? yes
 Are books audited by yourselves or certified public accountant? C. P. A.
 If C.P.A., give name and date of last audit. LA Prantx & Co.
 Average Terms: Buying 30 days Selling 30 days
 Time of year when notes and accounts rec. of customers uncollected are generally maximum Aug. minimum Jan.
 Time of year when stocks of merchandise on hand are generally maximum Aug. minimum Jan.
 Time of year when liabilities are maximum Aug. minimum Jan.
 BANK ACCOUNTS: Where kept, in addition to this bank First Nat Bank.

Are any suits pending against you? NO Claims (for income tax, etc.)

REAL ESTATE SCHEDULE (IMPORTANT THAT CORRECT LEGAL DESCRIPTION BE GIVEN)

LEGAL DESCRIPTION		ACREAGE PER MONTH	TITLE IN NAME OF	VALUE OF		MORTG. CONTRACTS OR LIENS		INSURANCE ON BUILDINGS
ADDITION	LOT BLOCK			GROUNDS	BUILDINGS	AMOUNT	WHEN DUE	
So. 40ft. of	20		Charles & Rosalie Brewer	5250.00	3612.10	Monthly	4000	
4929 N. E. 28th Ave., Portland, Ore.								
TOTALS								

N B.—If property is acreage, describe by meters and bounds. If city property, by lot and block number

SCHEDULE—STOCKS AND BONDS

DESCRIPTION	IF STOCK SHARES	IF BONDS DUE	RATE	PAR VALUE	MARKET VALUE	CARRIED AT

REFERENCES:

Name _____
 Address _____
 Name _____
 Address _____

SIGN HERE Charles P. Brewer
 DATE June 24 1947

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD

Appellant designates the following matters to be contained in the "Transcript of Record":—

Pleadings: Complaint, Order to Show Cause, Answers of Charles P. Brewer, Rosalie Brewer, Earl Merriott and Raymond Rightmire to Interrogatories, all dated November 15, 1947, Court's memorandum of November 18, 1947, Court's Order of November 19, 1947, Answer of defendants, Reply, Memorandum Opinion of January 30, 1948, Findings of Fact, Conclusions of Law, Judgment, Notice of Appeal, Designation of Record, Statement of Appellant's Points, Order transmitting original exhibits.

Evidence: Transcript of Testimony, pages 1 to 409, incl. in question and answer form, deposition of Farries Flanagan, excluding exhibits, deposition of Charles P. Brewer taken January 7, 1948, Exhibits 3, 5,(20), 7, 10, 11, 15, 28, 29, 31, 33, 35, 36, 38, 39, 40, 40(b), 40(c), 46, 47, 48, 49, 50, 51, 51(a), 53, 54, 55 (omitting Form 7 of contracts because of duplication with Exhibit 11), 56, 57 to 60, incl., 60(a), 61, 61(a), 61(b), 62 (including title of case and Par. V, Sections (1) and (5) to end of paragraph, omitting the residue).

ROBERT R. RANKIN,

Of Attorneys for Plaintiff-
Appellant.

[Endorsed]: Filed March 17, 1948. [76]

[Title of District Court and Cause.]

**APPELLEE'S DESIGNATION OF ADDI-
TIONAL PORTIONS OF THE RECORD**

Appellees designate the following matters to be contained in the Transcript of Record:

Affidavit of Charles P. Brewer in Response to Order to Show Cause;

Pre-Trial Order;

Defendants' Exhibit No. 77.

/s/ E. F. BERNARD,

Of Attorneys for Defendants-
Appellees.

PLOWDEN STOTT,

COLLIER & BERNARD,

WM. K. SHEPARD,

Attorneys for Defendants-
Appellees.

Service of the foregoing Appellee's Designation of Additional Portions of the Record is acknowledged this 26th day of March, 1948.

R. R. RANKIN,

By G. E. BIRNIE,

Of Attorneys for Plaintiff.

[Endorsed]: Filed March 26, 1948. [77]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF
ADDITIONAL RECORD

Appellant designates the following matters to be contained in the Transcript of Record:

Affidavit of T. C. Sibert, October 22, 1947, supporting motion for restraining order; affidavit of deGray S. Brooks answering affidavit of Charles P. Brewer, dated November 17, 1947.

(Note: No pretrial order was ever signed by the Court.)

Dated this 26th day of March, 1948.

/s/ ROBERT R. RANKIN,
Of Attorneys for Plaintiff-
Appellant.

Service of the foregoing "Appellant's Designation of Additional Record" by receipt of a duly certified copy thereof, is hereby accepted at Portland, Oregon, this 26th day of March, 1948.

E. F. BERNARD M.E.S.
Of Attorneys for Defendants-
Appellees.

[Endorsed]: Filed March 26, 1948. [78]

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

Oct. 24—Filed Complaint.

Oct. 24—Issue summons—to Marshal.

Oct. 24—Filed motion for restraining order.

Oct. 24—Filed & entered order to show cause on
Nov. 17, 1947—10 a.m. why preliminary
injunction should not issue. McC.

Oct. 30—Filed summons with Marshal's return.

Nov. 15—Filed answer of Charles P. Brewer to in-
terrogatories.

Nov. 15—Filed answer of Rosalie Brewer to inter-
rogatories.

Nov. 15—Filed answer of Earl Merriott to interro-
gatories.

Nov. 15—Filed answer of Raymond Rightmire to in-
terrogatories.

Nov. 15—Filed affidavit of Charles P. Brewer re
show cause order.

Nov. 17—Filed Return of service of writ.

Nov. 17—Filed affidavit counter to Charles P. Brew-
ers affidavit.

Nov. 17—Record of hearing on order to show cause
why preliminary injunction should not
issue—argued & order taking under ad-
visement & entered order allowing deft. to
Nov. 24 to answer. McC.

Nov. 18—Filed preliminary memo.

1947

- Nov. 19—Filed & entered order denying motion for restraining order and preliminary injunction. McC. Notices.
- Nov. 19—Entered order setting for pre-trial conference Nov. 24, 1947. McC. Notices.
- Nov. 24—Filed Answer of defts. C. P. & Rosalie Brewer—R. Rightmire & E. Merriott.
- Nov. 24—Record of pre-trial conference.
- Nov. 26—Entered order setting for further pre-trial conference on Dec. 26, 1947. McC.
- Nov. 24—Filed reply to counterclaim.
- Nov. 29—Entered order setting for trial on Jan. 20, 1948—10 a.m. Notices. McC.
- Dec. 26—Record of pre-trial hearing. McC.

1948

- Jan. 6—Issued subpoena & 15 copies to Atty. G. E. Bernie.
- Jan. 6—Filed Notice to take Deposition of deft. Chas. P. Brewer.
- Jan. 7—Filed notice of deft. to produce.
- Jan. 7—Pre-trial order submitted to J. McC.
- Jan. 14—Filed motion of defts. for inspection of documents.
- Jan. 14—Filed Transcript of Proceedings Dec. 26, 1947.
- Jan. 14—Filed Deposition of Charles P. Brewer.
- Jan. 14—Issued subpoena & 1 copy to Atty. Bernie.
- Jan. 14—Filed Stipulation for deposition of Harry Flannagan.
- Jan. 15—Filed answer to motion for inspection.

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- Jan. 15—Filed & entered order denying motion for inspection. McC.
- Jan. 19—Filed Deposition of Farries Flanagan.
- Jan. 20—Entered order that Kenneth C. Gillis be permitted to appear specially in this case. record of trial before court. McC.
- Jan. 21—Record of trial before court resumed & cot'd to Jan. 23, 1948—10 a.m. McC.
- Jan. 23—Record of trial before court resumed & order dismissing without prejudice as to deft. Carl Duncan on court's own motion. McC.
- Jan. 24—Record of further trial before court—argument—& order taking under advisement. McC. [79]
- Jan. 30—Filed Memorandum Opinion. McC. Copies to attys.
- Feb. 11—Lodged proposed Findings of pttf.
- Feb. 14—Filed & entered Findings of Fact & Conclusions of Law. McC.
- Feb. 14—Filed & entered Judgment, denying injunction & dismissing without cost. McC.
- Mar. 12—Filed notice of appeal by plntf.
- Mar. 12—Filed bond on appeal.
- Mar. 17—Filed designation of contents of record.
- Mar. 17—Filed points on which appellant will rely.
- Mar. 17—Filed Vol. 1 & 2 transcript of proceedings, Jan. 20, 21, and 23, 1948, in duplicate.
- Mar. 17—Filed motion for order directing transmittal of original exhibits.

1948

Mar. 17—Filed and entered order directing transmittal of original exhibits McC.

Mar. 22—Filed Transcript of Proceedings Jan. 20, 21, 23, 1948.

Mar. 25—Copies of notice of appeal to attorneys.

Mar. 26—Filed appellee's designation of additional portions of record.

Mar. 26—Filed appellant's designation of additional record.

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 81 inclusive constitute the transcript of record on appeal from a judgment of said Court in a cause therein numbered Civil 3936, in which Paramount Pest Control Service, a corporation, is Plaintiff and Appellant, and Charles P. Brewer et al, are defendants and Appellees; that the said transcript of contents has been prepared by me in accordance with the designations of contents of the record on appeal filed by the appellant and appellees, and in accordance with the rules of this court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with

the said designations as the same appear of record and on file in my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of the testimony taken and filed in this office in this cause, of proceedings on January 20, 21, 23, 1948, together with exhibits Nos. 3, 5-20, 7, 10, 11, 15, 28, 29, 31, 33, 35, 36, 38, 39, 40, 40-b, 40-c, 46, 47, 48, 49, 50, 51, 51-a, 53, 54, 55 (omitting form 7 of contracts because of duplication with exhibit 11), 56, 57, 58, 59, 60, 60-a, 61, 61-a, 62, filed in this office.

I further certify that the cost of comparing and certifying the within transcript is \$65.30 and the cost of filing the notice of appeal is \$5.00, making a total of \$70.30, and that the same has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 6th day of April, 1948.

[Seal]

LOWELL MUNDORFF,

Clerk,

By /s/ F. L. BUCK,

Chief Deputy. [81]

In the District Court of the United States
for the District of Oregon

Civil No. 3936

PARAMOUNT PEST CONTROL SERVICE,
a corporation,

Plaintiff,

vs.

CHARLES P. BREWER, et al.,

Defendants.

Portland, Oregon

Tuesday, January 20, 1948, 10:00 o'Clock A.M.

Before: Honorable Claude McColloch,
Judge.

Appearances:

Mr. R. R. Rankin and Mr. Leo Smith, Attorneys
for Plaintiff; Mr. Kenneth C. Gillis (Oakland, Cali-
fornia), of Counsel for Plaintiff.

Mr. Earl A. Bernard and Mr. Plowden Stott, At-
torneys for Defendants.

Court Reporter: Ira G. Holcomb. [1]

PROCEEDINGS OF TRIAL

Mr. Rankin: We are ready to proceed on behalf
of the plaintiff, your Honor.

Mr. Bernard: The defendants are ready, your
Honor.

The Court: Proceed. Call a witness.

Mr. Rankin: May I respectfully suggest to the
Court that an opening statement would be of as-
sistance, in order that you may have the matter in
mind.

The Court: Yes. I have heard it discussed two or three times.

Mr. Rankin: You do not care for an opening statement, then?

The Court: Go ahead, if you want to make it.

Mr. Rankin: The suit, your Honor, is against, primarily, Charles P. Brewer, based upon the language in the franchise, which is admitted, that he agreed not to, either as an employee, employer or otherwise, canvass, solicit or cater to any of the customers of the company which he may have known of because of his employment by the company, for a period of three years after the employment ceased.

It is against three employees of the company, Duncan, Rightmire and Merriott. They are, in turn, divided into different classifications. Rightmire is one who signed a statement to the effect that he would not work for any other pest control firm for a period of three years after the termination of any employment with this company. [2*]

Duncan has never been served. We have tried diligently to make service upon him and, so far as we know, he has never been in the jurisdiction since this action was brought.

Merriott is a man who was hired by Mr. Brewer. Under Mr. Brewer's sales agency agreement, he was presumed to sign these men on contracts similar to that which Duncan and Rightmire signed, but Mr. Brewer, for purposes of his own, did not so sign Mr. Rightmire.

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

Rosalie Brewer is the wife of the defendant Charles P. Brewer. She never was in the employ of Paramount Pest Control Service but aided and assisted her husband when he was their agent here under the franchise agreement, and did also aid and assist her husband after the termination of this agreement.

Both Merriott and Rosalie Brewer are charged as co-conspirators with the others because they knowingly and willfully entered into a conspiracy to break these contracts and aid and abet others in the violation of their agreements—knowingly, because we will show in this case that these parties did flagrantly—and I mean by “flagrantly,” upon their own volition—terminate their agreements and association with Paramount Pest Control Service as of August 1, 1947.

Within a week thereafter a suit was brought in the State court by the plaintiff to enjoin them from that practice. The case was dismissed on the ground that there had not been a qualification of this foreign corporation in Oregon so that it had the benefits of the courts. The merits of the case were not at that time gone into. Subsequently that qualification for entrance into this state was complied with, and then this suit was brought in this court charging these parties, all of them, with conspiracy, and particularly from that complaint in the State court, all of these matters concerning these contracts were known to the defendants, therefore, who are the same as the defendants herein and who continued thereafter, until this complaint was brought, and

afterwards, to violate that contract and to aid and abet each other in that violation.

When it comes to the damage part of the case, it is our position that, equity having taken jurisdiction of this case for the purpose of an injunction, damages are likewise recoverable even in equity, and the gross amount of damages that are alleged in the complaint in the various items amount to \$15,175. There will be much more to be said on the item of damages as we progress in the trial of the case.

The testimony, your Honor, will be rather long and detailed because it involves, first, the history of the company. The defendants claim that we are not doing the business in Oregon that we say we are doing, and the only way to do that, as I see it, is to show what business we did do and then show what we are authorized to do, and then show what we did in Oregon, and to show this in some detail as to the composition of poisons and so forth. In fact, for my own convenience, I have divided [4] the services of this company in this insecticide control into three phases and I hope they will be of as much benefit to the Court as they have been to me.

First is the detailed study of the poisons. That is necessary here because the defendants say that these are not unusual, that you can go on the common market and buy them. We distinctly remember this Court's statement that until something more definite is shown concerning these formulas, no temporary injunction would be granted.

These poisons are divided into two classes, one of which is common—common because the laws of Cali-

fornia under which these people operate—and which the evidence will show is the most severe state in the Union on regulations—require that all poisons be registered and, so, these are registered, even though common poisons.

These poisons are all put out under the brand and label of Paramount Pest Control Service. There is a lethal quality in practically all of them—there may be one exception. The composition of them is unique in that the evidence will show that if you use A, B, C and D and mix them in that order you get one result, whereas if you mix, say, A, C, D, B, you would get a different result.

Next, after we get through with poisons, there is the study of the insects to which the poison is applicable, because some of these poisons penetrate the reproductive glands; others [5] kill anything that comes in contact only; so it requires, the evidence will show, a knowledge of the bug itself or the pest itself, a knowledge of its habits and so on.

Then the third classification is that of the application, that is, to bring these two together, the poison and the pest. That is done by a long study of what is the most effective method of accomplishing this purpose what they will take and what they won't take. Some are sweet-loving insects and you have to have a basis of sugar or something of that nature. Others have different qualities, but I shall not go into the subject further than to state to the Court that this is not just an unusual or ordinary situation.

For example, they make a rat poison. You can buy rat poison on the common market, but we will endeavor to show, and I think the evidence will show to the Court, that this rat poison has a different quality.

Then this case involves an accounting, in order to show these items of damage. I will say to the Court that I have listed, on a little separate memorandum which is not an exhibit in the case, a summary of all of the allegations of damage we are alleging in the complaint, how much they amount to and what exhibits are offered in evidence to prove those. This I will give to the Court and to counsel simply as a convenience. It is not in evidence in the case but it may be used simply as a convenience to follow through. [6]

The practice of this, your Honor, is to bring about a determination of whether these parties are entitled to continue their practices, if not enjoined and, if there is any right to compensation in a monetary form, to recover.

A word about the parties so that the Court may know about whom we are talking at every stage of the case, from the very inception. The plaintiff is the Paramount Pest Control Service. It is a California corporation. It was incorporated in July, 1947.

Prior to that time, for several years, the Paramount Pest Control Service was a partnership consisting of T. C. Sibert. Its Vice-President is Mr. Glenn Fisher. Its Secretary-Treasurer is the accountant in the firm, Mr. Harold Hilts.

The principal defendant is Mr. Charles P. Brewer. Mr. Brewer was at one time a very close and intimate friend of the Siberts. They had known each other for some time. Mr. Brewer came to Mr. Sibert and asked if there was not a place for him in this Paramount Pest Control Service. He said he was interested in coming to the Northwest.

It so happens that very shortly after that, and before Mr. Brewer's training—and, by the way, there is very diligent training given these employees, because they are dealing with a lethal quantity and quality all the time.

Before that training was completed entirely, this opening occurred here and he came up, first under the partnership [7] and then later under the corporation. In a word, the evidence will show that there was every effort made by the plaintiff to aid and facilitate Mr. Brewer in the acquiring or maintenance and increasing of the business in this state.

Rosalie Brewer, his wife, as I previously stated, not an employee of the company, assisted her husband. She was brought up here in May, 1947, and, under the direction of the Secretary-Treasurer of the corporation, put in charge of the books here for her husband so that she could know the system that would be approved by the principal, the Paramount Pest Control Service. She was office manager, signed checks of the Brewer Pest Control Service for her husband and aided and assisted him at all times, either before the breach, when he was under the agency agreement or after the breach when he went in for himself. In fact, we have reason to be-

lieve, I think the evidence will show, that she was probably the primary mover in this separation.

The next is Carl Duncan, whom I will not dwell with except to say that we believe that he is or was a very trusted employee and a very efficient one. We have not been able to get service upon him but I do not understand that militates against showing that he is or was a member of the conspiracy.

The next is Raymond Rightmire. He is a very good pest control man and had been trained in a manner that will be more accurately described later by the Paramount Pest Control Service. He saw fit to throw in his lot with Charles P. Brewer. [8]

Earl Merriott was also an employee of Brewer. He was, in fact, never signed up on any contract.

Now, a word about the pest control business. Both of these parties are engaged in pest control. That will be clearly shown and it is not denied; it is admitted here. But there is a vast difference in the operation of these two businesses.

In the first place, taking the time element, the evidence will show that the plaintiff, or those who comprise its corporation organization now, have been engaged in the business for ten years. There were times when they devoted as high as eighteen hours a day to the business, but they were not experts and they had to learn by the practical method. They devoted a great deal of their money. They had to have jobs in which they earned their living, and then their pest control work was done nights after they had finished their regular jobs from which they could acquire funds to carry on, and as

time went on, with even greater expenditures of money, they created this business. On the other hand, the defendant, the evidence will show, has not even yet had a year's experience in pest control, while the plaintiff has hired entomologists, graduates of college, who have gone through the details of knowing all about bugs, knowing also about poisons. What Mr. Brewer and his associates have gotten has been primarily from the pest control training service conducted by plaintiff and, to a minor degree, from their own research and practical service in the field. [9]

So far as knowledge of insects is concerned, plaintiff, as I say, has these entomologists, while they have no employed entomologists in their concern. They had, from time to time, before this breach occurred, written to the main office as to problems relating to the classification of bugs and so on, but where they write now we don't know. I think it will be of assistance to the Court if I recite the events chronologically.

In January Mr. Brewer made his application. In February he went to work, in training. He ceased that training April 6th and came to Oregon, his training being less than required because of the necessity of having someone in the District of Oregon.

He worked under the partnership from April 6th to July 1, 1946, and in July they signed a contract, when the corporation was not yet formed, which contract was ratified after the corporation was formed.

That franchise—it is a contract, called a sales agent's agreement, July 1, 1946. I think we will find ourselves, for the sake of brevity, repeatedly calling that a franchise, because that is the name that the parties applied to it.

That franchise, however, went into effect and was lived up to until September 12, 1946. There is a dispute between the parties here, Mr. Brewer saying that it continued until November, about Thanksgiving in November. I think the evidence [10] will show the Court that it continued up to September 12, 1946. Mr. Brewer stated that he could not do as if he had a different arrangement, not under the whole contract but only that one part, that of claimants.

I think if the Court will bear with me for a little detail, it will help keep this evidence very much clearer in mind. Section 5 of the franchise agreement provides the agent shall take 80 per cent of the gross and the Paramount Pest Control 20 per cent. Out of the 80 per cent the agent pays the expenses of his operation. That is the franchise, as we shall term it, from time to time.

The experience of the Paramount Pest Control Service shows that it takes about 60 per cent to operate this business, depending on the efficiency of the operator, so we figure that takes about 60 per cent out of the 80 per cent, leaving 20 per cent to the agent and 20 per cent to the company.

After Mr. Brewer's protest of September 12, 1946, that was changed by Mr. Sibert and Mr. Brewer alone, to this effect: Mr. Sibert, at Mr.

Brewer's request, gave him permission to put all he wanted to into his business because that business was his, after it was created, and it was the understanding that when he took a dollar home, that is, when Mr. Brewer took a dollar home he should pay an equal amount to the Paramount Pest Control Service; and that the profits were divided on a fifty-fifty basis because, no matter how large or how small the profits were, on [11] Mr. Brewer's business, that profit could have been plowed into the business to whatever extent Mr. Brewer determined was advisable, save for the obligation that when he took home a dollar he paid an equal amount to the company.

Mr. Sibert omitted to mention that to Mr. Hilts and the matter went on until December when he happened to recall it and then told Mr. Hilts and his associates, and then received approval and ratification for what had been done.

Under Mr. Brewer's statement, he claims he went down there in November and at that time this whole adjustment was made. The evidence, from our standpoint, will show quite the contrary; that there was no business mentioned in November; that it was a vacation trip by Brewer; that he and his wife stayed at the Sibert home as guests of the Siberts and that the most friendly and pleasant relations existed. The only time any business was discussed was when Mr. Brewer went to the office of the company to get some supplies.

This agreement that I have mentioned was to run to the first of the year only, that is, the dollar-home and dollar-company agreement was to run only to the first of the year, at which time it was presumed Mr. Brewer would have created sufficient capital that he could then go on the franchise, and that was undoubtedly Mr. Brewer's conception because in February he made a payment on the franchise, and we have the check to show it. On March 6th he made a payment and we have the check to [12] show it. On the 13th of March he made a final payment, the amount of that payment being consistent only with the amount that was then due under the franchise.

Then, intervening, between the dates of January 1, 1947, and March 13, 1947, Mr. Brewer complained that he should develop this Eastern Oregon territory, where there were large distances to cover and little in between, no towns of any population, a very extensive territory.

They made an agreement, which is entirely separate. It is set out in the pleadings. It was entirely separate and made in order to develop the territory and help Mr. Brewer to accomplish substantial promotion of this business. The Paramount Pest Control Service agreed to send two men to Portland or to Oregon and develop that territory, with a division of salaries and expense and profits and so forth. Only part of that is agreed to by the defendants.

But, because that did not turn out to be profit-

able—and this is the situation wherein we find ourselves very much in disagreement and, therefore, I mention it particularly to the Court. It was Paramount's own idea that they voluntarily give to Mr. Brewer—and it was done without his request and even without his knowledge, after consultation of Sibert and Hilts—a continuation of the dollar-home, dollar-company basis, and Mr. Brewer was written to that effect by a letter which will appear in evidence. There were one or two meetings, but of no particular [13] consequence, as I recall it, until June.

On June 1st, with Mr. Brewer, Mr. Sibert and Mr. Hilts present, they readjusted the whole transaction covering the whole year. They canceled that provision about the franchise, gave him credit for what he had never paid, and continued to carry on.

The principals seemed to be perfectly happy. In fact, Mr. Sibert bought the tickets, because it was Mr. Brewer's child's birthday—bought the tickets to Oakland, California, and they all went down for a very pleasant and satisfactory visit. While they were visiting there, word came in that there had not been some collections made and it was suggested Mr. Brewer was not a good collector, and they retired to their room in some huff and nothing more was said.

On the 24th of July, less than a month thereafter, Mr. Brewer wrote to Mr. Sibert his letter of resignation in which he said he was terminating his agreement as of August 1st, that is, about a week later.

Under his contract his obligation was to at least give the company ninety days' notice. He paid no attention to that. In fact, I think the evidence will show that Mr. Brewer's regard for the contract was something that might as well not have existed throughout this whole proceeding.

Then, with remarkable facility, these defendants started to acquire the contact and patronage that they had acquired at one time for Paramount Pest Control Service.

We have here the applications which are already in [14] evidence and admitted. We also have Mr. Brewer's own sworn reply, showing that from August 1, 1947, until the answer was made in November, he had acquired 141 of the accounts, patrons and customers of the Paramount Pest Control Service, which was definitely in violation, obviously in violation of his agreement.

That gives a running statement, I think, of all that is necessary to give the Court a general outline.

Just a word as to these exhibits. Exhibit No. 45 is a photostatic copy of the mortgage from Mr. Brewer to the Bank of California, which has just been procured. Opposing counsel has had a chance to observe it and reservation for it was made at the pre-trial.

As to Exhibit 28, I feel I ought to explain to opposing counsel that probably I made an error in connection with that. It is a bill of sale made by Sibert and Fisher, as a copartnership, to the Paramount Pest Control Service. There were two or three copies of it made, and I have here a carbon

copy that was fully signed by Mr. Sibert and Mr. Fisher. The copy that was entered in evidence had the notarial acknowledgment on it that this copy does not have, so when I put that in evidence I did not put the copy in evidence without the notarial certificate but I put the other in and it did not have Mr. Sibert's signature. I asked Mr. Sibert to sign it and I thought afterwards that I should have delayed that action on my part until after the Court had been advised and its permission secured, so I now formally call [15] attention of opposing counsel to that fact, and we can either strike Mr. Sibert's signature to that, if it is so desired, or we can introduce the one without the notarial acknowledgment, which does not add anything. I do not care what may be done, but I felt I should call it to the Court's attention.

In conclusion, I thank the Court for its attention in giving me this opportunity. I hope it has been of some assistance. It has been rather sketchy, I feel myself, but we feel that we should be entitled to injunctive relief. It seems to me there has been a complete violation of this agreement and we ask for such damages as the Court may find, from the evidence and these exhibits, that plaintiff is entitled to.

The Court: You have not discussed any law.

Mr. Rankin: No.

The Court: You just seem to take it for granted.

Mr. Rankin: I am perfectly willing to discuss the law. In fact, that has been Mr. Smith's prin-

cipal duty. I didn't know that your Honor wanted it in an opening statement, but there are some cases in Oregon, particularly one case that, it seems to me, we could decide this case on alone. If we are going into any detailed discussion, I would like to have Mr. Smith cover that subject. He is familiar with it, having prepared the brief in the other trial.

It is to this effect, that where we have a contract whereby one party agrees, under proper consideration, to do [16] nothing to interfere with another party's business, that, while they are in restraint of trade, it is a legitimate restraint of trade if anywhere near reasonable, and three years is not unreasonable, not an unreasonable time as the authorities show. Therefore, this conspiracy charge is based on the fact that where he employed Rightmire and where the agent Brewer agreed not to solicit or not to go into a competitive business for a period of three years that the Court will say that that is a proper provision.

The Court: What is the Oregon case you say is the leading authority?

Mr. Rankin: What is the case, Mr. Smith?

The Court: What is the one you claim?

Mr. Smith: 161 Or. 65.

The Court: I will hear you, Mr. Bernard.

Mr. Bernard: I do not care, your Honor, particularly to repeat what I said in my opening statement at the pre-trial. Your Honor possibly will remember our position, that this contract was modified and that modification was to continue through-

out its term and then, suddenly, the plaintiff repudiated that modification, and it was for that reason that Mr. Brewer severed his connection with the company.

Briefly, as to the law—and I am preparing a brief on the subject, not yet in shape to hand to your Honor, but I will hand it to your Honor as quickly as I can get it done. It [17] is our contention, first, that in a case of this kind the burden is on the plaintiff to show that the contract was fair, the restrictive covenants reasonable, and that they have a real relation to and are really necessary for the protection of the plaintiff.

And, speaking of the fairness of this contract, taken in connection with the facts, this young man had been sent up here on a promise of a salary of \$250 a month; he had sold his home in California and one month afterwards he was told he must sign this contract or else he was through. In the various provisions in the contract there is only one thing that the plaintiff promised to do, and that was to furnish such advertising as they might think necessary. We will have something to say later as to the reasonableness of the contract under the circumstances.

Further, we claim the law to be that it must appear that the plaintiff has performed all obligations imposed on it by the contract before plaintiff is entitled to injunctive relief; further, that an injunction will be denied when it appears that plaintiff's conduct in obtaining the contract was unjust

or unfair or in plaintiff acts unjustly under the contract or if the contract is unjustly harsh, unfair or unreasonable or if the entire matter appears to be inequitable.

We will contend, your Honor, that regardless of consideration, the conduct of this company towards this man when [18] they sent him up here, the circumstances under which they obtained the contract, the nature of the contract itself and their repudiation of the modification of it would require this Court or at least give cause to this Court to deny any injunctive relief.

The Court: What did the plaintiff furnish under the contract?

Mr. Bernard: The plaintiff furnished nothing under the contract, your Honor. They furnished an opportunity to this young man to go into the pest control business. As we look at this contract, taking it by its four corners, they sent him up here and said, "You can go to work in the pest control business."

The Court: Why couldn't—

Mr. Bernard: I know what your Honor has in mind.

The Court: No, you don't. Why couldn't he have done it himself?

Mr. Bernard: He could have done it himself. I think you mean, by the terms of the contract.

The Court: Did they provide any financing?

Mr. Bernard: Provided no financing.

The Court: Provide materials and supplies?

Mr. Bernard: I think there were some supplies and materials to start in with, yes, although they were paid for.

The Court: For which he paid?

Mr. Bernard: For which he paid. They are charged against him. In other words, as I look on this contract, what they are [19] actually doing is to levy a 20 per cent tax on his gross business for the privilege of him going into the pest control business in Oregon. They furnished him really with nothing.

The Court: Is it any different from any other concern, say, that wants to open up a new territory somewhere, where they say, "We want you to go up there and work for us and want you to agree that, if you quit us, you won't, within a period of three years, go in the same kind of business?"

Mr. Bernard: There may be something for the Court to consider along the lines of public policy.

The Court: Is it any different from what frequently happens in the commercial world where some concern says, "We are going to open up an agency in Los Angeles," for example, or take a case nearer home. Let's take a case here in Oregon and, as time goes on, they send men out to open up new territories. Is that the question here, whether a man could go out and open up a new territory and bind himself not to go into a competitive business?

Mr. Bernard: That is the very question, your Honor, whether or not they could enforce a contract of that kind.

The Court: Are contracts of that kind enforceable in equity?

Mr. Bernard: I don't think so, no. In other words, I think plaintiff should have been required to furnish something except the mere opportunity to go out and go to work.

The Court: Do you want to speak further, Mr. Rankin?

Mr. Rankin: No, your Honor. [20]

The Court: All right. Proceed with the testimony.

Mr. Smith: May it please the Court, I would like to submit to the Court a trial brief which has been prepared on the subject of contracts, the validity of agreements in restraint of trade, and so forth. At the same time I will give a copy to counsel for the defendants and at this time would also like to request that if the defendants have any citations of authorities in support of their contentions that such a contract is unreasonable, we would appreciate it very much having those citations in ample time so that we may go to the Law Library and study the question in the intervening time and be able to make our arguments at the proper time.

The Court: We have no jury here. Mr. Bernard said he would complete his memorandum as soon as he can. I imagine that will be some time during the day.

Mr. Bernard: I do not want to deceive the Court. It may take me a day or two to get that memorandum in shape. I thought this, your Honor,

it being a case before the Court, that even though I handed it up promptly at the end of the case they would have an opportunity to reply.

The Court: Mr. Smith has just made a special request that if you have any authorities now he would like you to give them to him.

Mr. Bernard: I will have to give them to him later.

Mr. Rankin: If the Court please, I would like at this time [21] to move the admission, for the purpose of this case, of Mr. Kenneth C. Gillis, an attorney of Oakland, California, admitted to practice in both the State and Federal Courts in the State of California.

The Court: Is that satisfactory to you?

Mr. Stott: Yes, your Honor.

The Court: Very well. Proceed.

THEODORE C. SIBERT

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rankin:

Q. What is your name, please?

A. Theodore C. Sibert.

Q. Where do you live, Mr. Sibert?

A. 1139 Sunny Hills Road, Oakland, California.

Q. What is your business?

A. I am President of the Paramount Pest Control Service.

(Testimony of Theodore C. Sibert.)

Q. How long have you been in the pest control service?

A. I first started in 1927, not steady, but I have been pretty close to the pest control service for around twenty years.

Q. When you say "not steady," what else did you do?

A. I am a cement finisher, a carpenter and a plasterer. I served an apprenticeship as carpenter—— [22]

Q. Did you, while you were carrying on these trades, also endeavor to do something in the nature of pest control?

A. I have been associated with pest control since 1927, working part time.

Q. Who was associated with you, if anyone?

A. Mr. Watson T. Moore.

Q. Anyone else?

A. Working for the Western Exterminating Company.

Q. Anyone else?

A. Mr. Charles Brewer and many others.

Q. Concerning your original enterprise, was it a partnership or corporation?

A. Co-partnership.

Q. Who was your partner?

A. Glenn H. Fisher.

Q. How long were you and Mr. Fisher in partnership?

A. November 15, in 1938, we started the Paramount Pest Control Service.

(Testimony of Theodore C. Sibert.)

Q. To when?

A. About July 1st, around July 1st or something, 1946.

Q. What did you do then?

A. We formed a corporation.

Q. Is that corporation the plaintiff in this case, the Paramount Pest Control Service?

A. It is. [23]

Q. When did you come to Oregon?

A. Came to Oregon July 1, 1942.

Q. How did you happen to come to Oregon?

A. Because of the request of the S. P. Railroad Company, handling their business in Oregon.

Q. Had they been a previous client of yours in the State of California? A. Yes.

Q. The Court has indicated he wants us to move along, so will you briefly give a summary or a brief sketch of the pest control business and how you built it up and what it amounts to at the present time?

A. Well, Mr. Fisher and I started the Paramount Pest Control Service November 15, 1938. He had been previously in business for two and a half years by himself. We *didn't enough* work to keep us both going, so I worked with my carpenter tools, my carpenter's trade, daytime, and he solicited on the street, and he done his work right at the office, and we done the work on a Sunday or whenever we could. We worked pretty hard for years.

(Testimony of Theodore C. Sibert.)

We had a new idea. Our idea was this, to formulate the best of chemicals, that is, the best on the market. We had had quite a lot of experience in chemicals before and in servicing and applying them to pests or rats, or whatever we tried to kill.

So, we decided not to sell the chemicals and to service these places, sign this work up, so much for the cleanup the first month and then so much each month thereafter, and this took in a wonderful way. We attained as near 100 per cent as we could in controlling of all disease-carrying pests pertaining to structural. We worked pretty hard.

Q. What do you mean by saying you "worked pretty hard"?

A. That is what I was about to tell you. We worked sixteen and twenty hours a day. There was many weeks I didn't take off my shoes, only to change my socks and wash my feet, and just lay down on the couch.

Q. What ingredients did you use in your business? A. I don't understand the question.

Q. What did you do with pest control? How did you control pests? How did you kill them?

A. Well, we have our own laboratories; we have research and we take chemicals and we formulate them applicable to a certain type of insect or that certain type of rodent, or whatever the problem might be. We train men.

Q. Train them to do what, Mr. Sibert?

A. We train men along the lines of formulating that is necessary, and how to apply that chem-

(Testimony of Theodore C. Sibert.)

ical, that poison that we leave in there, foodstuffs especially, and to have the right amounts in the right containers; and then train them to keep clean and so that they don't do things that they shouldn't on the job. It is quite extensive training. It is very unique. [25]

Mr. Rankin: At this time, your Honor, the witness having testified that they were incorporated, we would like to offer in evidence—and if we can keep these exhibits in the same order, giving them the same numbers, it will aid greatly in many respects.

The Court: Why not put in all the exhibits at once?

Mr. Rankin: That is all right with me, your Honor. Counsel has had them and has looked them over. Have you any objection to any of these exhibits?

Mr. Bernard: There are some exhibits in there that deal with some person's memoranda as to accounts. Of course, we object to those as being hearsay unless they are proved by some witness.

Mr. Rankin: I think that objection would be proper, your Honor. If counsel will point them out——

The Court: No, we will do it like we do in all cases like this. All of the exhibits that have been marked for identification on both sides will be admitted as exhibits in the trial, taking the same numbers and being subject to any objections that

(Testimony of Theodore C. Sibert.)

may heretofore have been made or may hereafter be stated.

(The following Plaintiff's Exhibits were thereupon received in evidence and marked as follows:) [26]

Plaintiff's Exhibit No.	Description
1	Articles of Incorporation of Paramount Pest Control Service.
2	Declaration of Purpose to Engage in Business in Oregon.
3	Certificate of Authority to Engage in Business in the State of Oregon.
4	Receipt for fees, Corporation Department, State of Oregon.
5-1 } to } 5-26 }	Labels—Paramount Pest Control Service.
6-1 } to } 6-7 }	Instructions and Training Given Employees, Paramount Pest Control Service.
7	Rules and Regulations of Paramount Pest Control Service.
8	Rules and Regulations of Paramount Pest Control Service.
9	Rules and Regulations of Paramount Pest Control Service.
10	Safety Rules in Using Compound 1080.
11	Form of Service Order for Paramount Pest Control Service.
12	Form in re service performed.
13	Form of receipt—Paramount Pest Control Service.
14	Duplicate copy of receipt.
15	Application of Charles P. Brewer for Employment.

(Testimony of Theodore C. Sibert.)

Plaintiff's Exhibit No.	Description
16	Employment Application Blank—Carl Robert Duncan.
16-A	Form of Application—Paramount Pest Control Service.
17	Form of Application for Registration of Economic Poisons—State of California.
17-A	Form, Application for Structural Pest Control Operator's License.
18	Form of Application for Structural Pest Control Field Representative's License.
19	Form of Application for Fidelity Insurance, The Fidelity & Casualty Company of New York.
20	Copy of By-Laws for Internal Administration of Structural Pest Control Board.
20-A	Copy of By-Laws for Internal Administration—Structural Pest Control Board.
21	Copy of By-Laws for Internal Administration of Structural Pest Control Board.
21-A	Copy of By-Laws for Internal Administration—Structural Pest Control Board.
22	Time Reports—Carl Duncan.
23	Time Reports—Raymond Rightmire.
24	Copy of Publication "Pest Control and Sanitation," September, 1947.
25	Copy of publication issued by Julius Hyman & Company, Denver, Colorado, "OCTA-KLOR," May, 1947.
26	Copy of publication of Socony-Vacuum Oil Co., "Technical Bulletin," June, 1947.
27	Sales Agent's Agreement with Paramount Pest Control Service and Charles P. Brewer.
28	Bill of Sale from co-partnership to corporation, Paramount Pest Control Service.
29	Copy of letter March 15, 1947, H. W. Hilts to Charles Brewer.

(Testimony of Theodore C. Sibert.)

Plaintiff's Exhibit No.	Description
30	Check dated February 6, 1947, \$338.00, to Paramount Pest Control Service.
31	Supporting Voucher No. 181.
32	Check dated March 6, 1947, \$250.00, to Paramount Pest Control Service.
33	Supporting Voucher No. 229.
34	Check dated March 13, 1947, \$494.25, to Paramount Pest Control Service.
35	Supporting Voucher No. 244.
36	Accounting as of June 30, 1947, between Hilts and Brewer.
37	Check dated July 9, 1947, \$259.61, to Paramount Pest Control Service.
38	Supporting Voucher No. 413.
39	Statement of Accounting on Franchise for July, 1947.
40	Tabulation in re Eastern Oregon Expense.
40-A	Indenture of Lease, The House of Celsi, Lessor, Paramount Pest Control Service by Charles P. Brewer, Lessee.
40-B	Sign entitled "To Our Patrons," Paramount Pest Control Service.
40-C	Sign "Patrons"—Brewer's Pest Control.
42	Letter, July 24, 1947, Charles P. Brewer to T. C. Sibert.
43	Check dated March 3, 1947, \$226.00, to Kelly Motors.
44	Supporting Voucher No. 203.
45	Photostatic copy of Chattel Mortgage executed by Charles P. Brewer, \$1,052.63, to Bank of California N.A.
46	Photostatic copy of Assumed Business Name Certificate, Brewer Pest Control.
47	Photostatic copy of Certificate of Retirement, Brewer's Pest Control.

(Testimony of Theodore C. Sibert.)

Plaintiff's Exhibit No.	Description
48	Photostatic copy of Assumed Business Name Certificate, Brewer's Pest Control.
49	Statement of Accounting on Franchise for January and February, 1947.
50	Statement of Assets taken over by Charles P. Brewer.
51	List of Accounts totaling \$925.89.
51-A	Statement entitled "Eastern Oregon State Run"—Total Revenue, \$1357.00.
53	State of Expense, \$3596.95.
54	File of "Canceled Accounts with Time to Run as Per Contract.
55	File of "List of Accounts on Books" Longer than one year and canceled because of Brewer action.
56	Copy of letter dated October 22, 1947, Attorneys for Paramount Pest Control Service to Charles P. Brewer.
57	Profit & Loss Statement, January 1 through February 28, 1947.
58	Profit & Loss Statement, January 1 through March 31, 1947.
58-A	Profit & Loss Statement, January 1 through March 31, 1947.
59	Balance Statement, January 1 through April 30, 1947.
59-A	Portland Profit & Loss Statement, January 1 through April 30, 1947.
60	Profit & Loss Statement, January 1 through May 31, 1947.
60-A	Balance Statement, May 31, 1947.
61	Balance Statement, June 30, 1947.
61-A	Profit and Loss Statement, January 1 to June 30, 1947.

(Testimony of Theodore C. Sibert.)

Plaintiff's Exhibit No.	Description
61-B	Trial Balance, June 30, 1947.
62	Copy of Complaint in Circuit Court of the State of Oregon, Paramount Pest Control Service v. Charles P. Brewer, et al.
63	Copy of Notice to Produce in Cause No. 178013, Circuit Court of the State of Oregon.
64	Check dated September 10, 1947, payable to Conger Printing Co., signed "Brewer's Pest Control."
65	Check dated October 17, 1947, payable to Conger Printing Co., signed "Brewer's Pest Control."
66	Check dated October 10, 1947, payable to Conger Printing Co., signed "Brewer's Pest Control."
67	Form of Receipt—Brewer's Pest Control.
68	Form to be signed by customer—Brewer's Pest Control.
69	Business Card, Brewer's Pest Control.
70	Form of Service Order—Brewer's Pest Control.
71	Form of Daily Report—Brewer's Pest Control.
72	Form of Statement—Brewer's Pest Control.
73	Envelope bearing return address "Brewer's Pest Control" (small size).
74	Envelope (large size) bearing return address "Brewer's Pest Control."
75	Letterhead—Brewer's Pest Control.

Mr. Rankin: Your Honor, the first exhibits relating to the corporation, I anticipate there is no objection to them.

The Court: They are all in.

Q. (By Mr. Rankin): Mr. Sibert, I would like to hand to you Plaintiff's Exhibit No. 5, sub-numbered No. 5-1 to No. 5-26, and ask you to state, after

(Testimony of Theodore C. Sibert.)

having reviewed those, whether they are poisons that are put out by your company, labels of poisons put out by your company?

The Court: You know what they are. You have seen them. Are they covering your material?

A. Yes.

Q. (By Mr. Rankin): Are they poisons put out by your company? A. They are, sir.

Q. Are all of these poisons such as you can buy on the common market? A. No, sir.

Q. How many are there altogether? Twenty-six? A. Twenty-six here, sir. [33]

Q. What proportion of those can you buy on the common market, not under your name but which are common poisons that you can buy?

A. What proportion of these chemicals?

Q. What proportion of these poisons represented by these labels can you buy on the common market?

A. These chemicals are not for sale. They are for use in the service department.

Q. If they contain poisons that are not unique in your business but are common on the market, how many of those are covered by these labels?

A. There is thirty-one poisons which we have registered—there is five that is basic poisons which we have to register.

Q. You say you have to register. Just what do you mean by that?

A. Because of the strict laws, the Economic Poisons License of California. It is a package law,

(Testimony of Theodore C. Sibert.)

sir; and it is the Economic Poisons Law—As long as you are a reliable company and have chemists and the equipment to formulate these poisons and to package them and put your label on and the correct amount of the compound, the amounts in the poisons, the exact amount to the gram of the poisons and the exact amount to the gram of the inert ingredients.

Q. You say there are five basic poisons?

A. Five basic poisons, yes. There are thirty-one poisons that we have registered. [34]

Q. You said that. A. Yes.

Q. Five of them are basic?

A. There are chemicals that you buy that are not basic, what are common poisons, because you can buy those on the market.

Q. As to the other twenty-six you describe, is there anything done by your company in connection with those? A. Yes.

Q. Is what you do unique or different from those that you get on the common market?

A. It is, sir.

Q. Have you any man in your employ who, as a part of his duty, has anything to do in connection with these poisons? A. I have Mr. Bushing.

Q. What is his department in your company?

A. He is an entomologist and chemist, a teacher to teach the men, our men, how to handle poisons, especially how to handle poisons safely.

Q. Does your business require any knowledge as to the pests? A. It does, sir.

(Testimony of Theodore C. Sibert.)

Q. What knowledge do you have to have in order to handle pests?

A. You have to have quite a lot of knowledge because it is like this: One insect, it takes one poison to kill that one insect; and some poisons will not apply to that insect, and you have to know how to identify that insect, so, therefore, we have a [35] school and have an entomologist, and that is the service that you get—something that the boys on the road don't have. He is always there. They send insect specimens in to him and they are correctly identified and the exact formulation is prescribed, just what and how much to use to take care of the insect.

Q. Suppose you gave too much poison, would that still kill the insect?

A. Certain poisons does not kill if you give too much.

Q. To what do you refer, generally?

A. Well, arsenic—too much arsenic will not kill. There are certain poisons in here that are repulsive, that a person could not take—it is repulsive.

Q. Do you know of any other pest control service that has a branch instructing its men?

A. Not on the Coast, sir.

Q. Do you require your employees to have any training?

A. We have to train all employees because of the safety, because in California there is a very strict law. We have the Structural Pest Control Board

(Testimony of Theodore C. Sibert.)

in California, and everybody that works in this industry in California must pass a written examination under the Board, and it makes a profession out of this business.

Q. In what states do you do business?

A. Do business in California, Oregon and Washington and Arizona.

Q. The law of which state or states do you find the most exacting? [36]

A. California.

Q. Have you complied with all the laws of California in respect to your business? A. Yes.

Q. Do you, as a matter of fact, thereby also conform to the requirements of the other states?

A. We run our business according to the laws of California.

Q. Will you look at the set of exhibits that you have before you? A. Yes.

Q. Explain to the Court how those various instruments are used in connection with your business?

A. Exhibit 6?

Q. Just a moment, Mr. Sibert. The exhibit starts with No. 6-1.

A. I have it now, sir. This is literature that is got out by Mr. Bushing.

Q. What it is, please? Just explain how it fits in with your training of your employees?

A. We set these boys right on the correct identification of all pests and those especially what we have the most of, and we formulate the information

(Testimony of Theodore C. Sibert.)

to give to all the men to study so that they can be better men and can identify these pests and insects which they have to work with at all times.

Q. Take Exhibit 6-1. What is that? How does that bear on this matter? A. This is bedbugs.

Q. What about it?

A. Well, it explains the type of injury that would result from the bite of a bedbug and what diseases it carries when it bites.

Q. What do you do with that pamphlet that gives that information?

A. We mimeograph these off and give them to all men that works for us.

Q. Take No. 6-2, "White-Footed Mice."

A. This is instruction on a very uncommon mouse and information that the boys should need. It gives identification and gives all measures to handle this certain type of mouse.

Q. You mean, to identify the mouse so that it can be killed? A. That is right.

Q. Take No. 6-3.

A. Clothes moths, the importance and type of injury, food of the moth, and giving the chemicals that should be used and the type of inert ingredients, history and habits, and then control measures, and we explain exactly what should be done.

Q. What do you mean by "inert ingredients"?

A. Inert ingredients is to carry all the poisons, to formulate certain poisons together so that they will be compounded to give a certain type of poison

(Testimony of Theodore C. Sibert.)

that will do a certain job, to take care of that certain type of rodent or that certain type of insect.

Q. Are inert ingredients themselves poisons, necessarily? A. Not necessarily.

Q. When your labels mention active and inert ingredients, what [38] are the active ingredients, generally speaking?

A. They are the poisons that is found. These poisons, every one of them, is inspected once a year by the Economic Poisons License Department. They come right out to the boys on the job and they take them out of the can. These poisons must be labeled. They take a certain portion of a certain specimen once a year to see that these poisons are exactly as on the label.

Q. Do you have to show the content of all these poisons on the labels? A. We do.

Q. Do you have to show what the inert ingredients are? A. No.

Q. How do you find out what inert ingredient to use?

A. We have to experiment as to what inert ingredients to use.

Q. These articles or papers you are mentioning here, under this Exhibit 6-1 to 6-7, are they given to the employees for their instruction and use and training, such as you have already stated?

A. They are, sir.

Q. Take Exhibit No. 6-4, "Carpet Beetles or Buffalo Beetles."

(Testimony of Theodore C. Sibert.)

A. It has to do with the importance and type of injury. If you were not trained, you wouldn't know the difference between clothes moths and these. It is entirely different. They have an entirely different chemical, an entirely different application to take care of them. This explains the food and distribution, and how they [39] come and where they are found. They are found different places, and they hibernate. This shows the life history, appearance and habits, and of course the control measures, how to take care of them and what chemicals to use.

Q. Take Exhibit 6-5. A. Yes.

Q. What is that?

A. That is what we call the "Bug House Questionnaire."

Q. Does that apply to the bug itself or what?

A. This applies to the man after he is taught and goes to school. He is sent this "Bug House Questionnaire" containing true and false questions to see and get his IQ to see what he is getting out of his studies.

Q. Suppose he does not answer the questions properly?

A. Then we go to his superior, whoever he is working for, and see what is wrong.

Q. Suppose he answers them excellently, what happens then?

A. Then that is in his favor.

Q. What happens? Does he get any work because of that?

(Testimony of Theodore C. Sibert.)

A. We don't have priorities. It is the man that knows how to do the job and knows exactly what is best for his job, he goes forward best.

Q. What about Exhibit 6-6?

A. That is another "Bug House Questionnaire" covering rats and mice, bedbugs, silverfish and fleas, carpet beetles, moths and [40] ants.

Q. Silverfish, what is that?

A. Silverfish is an insect.

Q. Is that of the same nature of a questionnaire as we just got through with?

A. This is the same nature of a questionnaire.

Q. Take Exhibit 7. A. 6-7?

Q. Yes. What is 6-7?

A. This is a report of sodium fluoroacetate baiting. This poison is very dangerous itself, so dangerous itself that there is no known antidote. It is very hard to get. No company can buy it without they are an established company. These are poisons that whenever a man uses them in training, or otherwise, he has to fill out one of these reports as to where he puts his bait, and then keep a complete account of that bait, of that poison.

Q. You say you can't buy it, that not everyone can buy that?

A. The company that makes this certain chemical insists that you are an established company and have quite a large liability insurance. They don't undertake the liability themselves.

Q. When you say "quite large," what do you mean by that? A. At least 40 and 80.

(Testimony of Theodore C. Sibert.)

Q. What do you mean?

A. If one person gets injured, \$40,000; if there is a bunch of [41] them, they divide the \$80,000.

Q. You have to furnish a bond before you can buy it?

A. There is a bond that you have to have.

Q. Are there many companies that manufacture that kind of poison?

A. There is only one company that manufacturers this poison.

Q. Why? Is their supply abundant or not?

A. Very limited.

Q. Take a concern that was just starting in, perfectly new, could they go out and purchase it?

A. Well, they would have to furnish their bond. I don't know, but it would be very hard if they did.

Q. Take Exhibit No. 7.

A. That is Rules and Regulations of the Paramount Pest Control Service. When a man comes to work for us, we talk to him quite a while and we hand him the Rules and Regulations to read. This has to do with how to keep clean and how to handle your kits and how to protect themselves. A man must understand he has to be careful, and he has to use the things we furnish him.

Q. Is that signed? A. It is signed.

Q. It is signed by whom?

A. Signed by Rightmire, Raymond L. Rightmire.

(Testimony of Theodore C. Sibert.)

Q. Look at Exhibit No. 8, please.

A. This is another copy of Rules and Regulations.

Q. Is that signed? [42] A. Yes.

Q. Whom is that signed by?

A. Carl Duncan.

Q. Look at Exhibit No. 9.

A. That is another copy of Rules and Regulations.

Q. How does it relate to the others?

A. Every once in a while we have to change these; change them a little bit. This is a new one.

Q. Look at Exhibit No. 10.

A. Safety Rules in Using Compound 1080.

Q. What is Compound 1080?

A. Sodium fluoroacetate.

Q. Is it dangerous or not?

A. Very dangerous. These are the safety rules in using it. It tells just exactly what it is, where it comes from, the lethal dose. No employees are allowed—they are not even allowed to dilute it. We do not allow them to handle it. It is told here just exactly what they have to do.

Q. Do you have rules relating to the service of the employees and how they should serve your company for their own protection and for sanitation and so forth? A. We do.

Q. See if Exhibit No. 11 has any bearing on this?

A. Exhibit No. 11 is the general service order, or our contract.

(Testimony of Theodore C. Sibert.)

Q. That is Form 7, I believe. How do you handle that? [43] A. Form 7. This is Form 7.

Q. Well, I don't care about the form number. It is Exhibit 11 and it is called "Service Order."

A. Yes.

Q. How do you handle that? Just explain to the Court what function it has in your business?

A. This is a general service order which it takes a licensed man in the State of California to carry. California does not allow you to identify pests without you have a license in that state to do that job.

Q. Did Mr. Brewer have any license in California? A. He did not.

Q. Go ahead.

A. This is for general pest control. It has the name and address, the service, the type of property and the order number, the time of starting and who you see, and it has most of the pests that we have in general, and the date and price and conditions, and the length of the contract.

Q. When do you get that?

A. We get this before we start to work on the job.

Q. Whom is it signed by?

A. It is signed by an official salesman or usually the branch manager in the district.

Q. Anyone else?

A. It is also signed by the customer. [44]

Q. Is that a contract between you and the customer, is that what you mean? A. It is, sir.

(Testimony of Theodore C. Sibert.)

Q. Exhibit No. 11 is what?

A. It is a service order.

Q. What is the next exhibit?

A. It gives——

Q. Pardon?

A. It gives the name, address, remarks, and space for the condition of the job, signed by the operator and the customer.

Q. What is the next exhibit?

A. Receipt, in duplicate. When one of our servicemen has to collect money, he gives a duplicate receipt. These are numbered and he must account for the numbers.

Q. Whom does the duplicate go to?

A. The duplicate goes to the owner and he brings the other in with the money, the cash.

Q. How about Exhibit No. 15? Does that have any bearing on your business?

A. This is an application blank.

Q. When do you require applications?

A. When a man comes in to ask us for work, if we are interested or think he would make an operator, we ask him to fill out an application blank. Then we more or less investigate and talk it over and when we need a man we pull these application blanks out, [45] and the one we want we call in, or get them in and give them a chance to work for us.

Q. Do you know whose application blank that is?

A. I do. This is Charles Brewer, Charles P. Brewer.

(Testimony of Theodore C. Sibert.)

Q. Does that application state whether he had any previous experience in pest control or not?

A. It does. He had no previous experience.

Q. So far as you now, either from this application or otherwise, had Charles P. Brewer any experience or service or training in pest control prior to the time he came to work for the Paramount Pest Control Service?

A. His application says none.

Q. What is Exhibit No. 16? A. 16?

Q. Yes.

A. That is another application blank.

Q. Is it like the other one or more recent in form?

A. No, it is a little later one. This is an earlier one.

Q. What is No. 17?

A. This is No. 16 is filled out.

Q. What is No. 17?

A. It is an application blank.

Q. An application blank? A. Yes.

Q. What is No. 17? [46]

A. You misunderstood me, Counsellor. 17 is the blank one. 16 is filled out.

Q. What is 17?

A. It is the latest application form we have.

Q. For what purpose?

A. When a man comes to work for us, or we are interested in him, we will have him fill an application form out.

(Testimony of Theodore C. Sibert.)

Q. Isn't that for the registration of poisons?

A. No, sir.

Q. Isn't it?

A. Yes; I am sorry, sir, it is. I had the wrong one.

Q. Yes.

A. No. 17 is an "Application for Registration of Economic Poisons," under the Department of Agriculture in California.

Q. Explain why that is required, if it is, and what is done with it?

A. This controls the packaging laws of the State of California. It controls any poisons that is packaged. It has to be registered in the correct formula, with the amounts of poisons, and the skull and crossbones on it, and the antidote, and the date and address where they are packaged and put into the formulation and sealed, sir.

Q. Referring back to that series of exhibits numbered 5-1 to 5-26, relating to your labels, is there any particular designation on those relating to your products? [47]

A. These are all products that we have formulated.

Q. Get my question. Is there any particular designation on them?

A. This is a license, an application to register.

Q. No. I am not talking about that now, Mr. Sibert. I am calling your attention again to the labels in Exhibit No. 5-1 to No. 5-26. Is there any

(Testimony of Theodore C. Sibert.)

particular designation on those labels relating particularly to your products?

A. These are all our products, every one of them labels.

Q. Is there any particular designation on them relating to your products? What about that man on there?

A. This man is our trade-mark.

Q. What is it there? What does it say?

A. "Doc Kilzum, his patients all die."

Q. Is that your trade-mark?

A. That is our trade-mark.

Q. That is what you put out?

A. That is right.

Q. Going back to Exhibit No. 17-A, what does that relate to?

A. This is an application for Structural Pest Control Operator's License.

Q. How is that required and what do you do under it?

A. Under this application you are—the law says you must be in the pest control business in California at least one year before you are allowed to apply for the operator's license of [48] California. This is the written examination under the State Board of Structural Pest Control of California.

Q. What is No. 18?

A. "Structural Pest Control Field Representative's License."

Q. What is the difference between the field representative's and the operator's license?

(Testimony of Theodore C. Sibert.)

A. This field representative is a worker or serviceman.

Q. What is No. 19?

A. Application for a bond, Fidelity and Casualty Company of New York.

Q. Do you procure bonds on employees?

A. After a man goes to work for me, he fills this application out and we procure the bond.

Q. Is that required?

A. That is required of every employee.

Q. What is No. 20?

A. By-laws of the Structural Pest Control Board, instructions to applicants for a field representative's license, how to apply, and the conditions of study.

Q. What is the Structural Pest Control Board?

A. The Structural Pest Control Board is elected direct by the Governor of the State.

Q. Elected? You mean appointed?

A. They are appointed, yes, as a rule.

Q. Yes. [49]

A. They are appointed in judgment over the businessmen of the structural pest control in California, to see that they live up to the regulations and rules which they set forth.

Q. Is it limited to the State of California?

A. That is limited to the State of California.

Q. This particular instrument, Exhibit 20, what is that?

A. This is instructions to applicants for a field representative's license?

(Testimony of Theodore C. Sibert.)

Q. Then a field representative, as I understand it, is not only under your direction but under the direction of the Board? A. That is right.

Q. No. 20-A, what is that?

A. This is the same, only different; instructions to applicants for an operator's license. I mean for an operator, not a field representative's. Sorry. This is sent from the State Board of California to the operator with instructions.

Q. What about No. 21?

A. This relates to the examination and the details of—it says "Bylaws for the Internal Administration of the Structural Pest Control Board."

Q. What measure do you take, Mr. Sibert, when you have employed a man who is qualified in all these respects to serve the company in the pest control service, to keep track of what he is doing?

A. I don't quite understand your question.

Q. Say that you have a man in your service now. He is qualified, [50] otherwise. How do you keep track of him after you get him employed?

A. We have our service slips that they turn in every day, a time sheet showing what work they did for that day.

Q. Will you examine the next exhibit, No. 22, and see if that has anything to do with the matter?

A. Time reports. We have time reports. We know where every man is and wherever he works that day, by our system we have in the office.

Q. Whose time report is that?

A. Carl Duncan's.

(Testimony of Theodore C. Sibert.)

Q. Covering what particular time?

A. The week ending May 11, 1946.

Q. How many sheets are in that exhibit relating to Carl Duncan?

A. Eleven—ten.

Q. Where do those sheets show that he did that work?

A. In Portland.

Q. What was he doing in Portland, Oregon, in May, 1946?

A. Instructing Charlie Brewer and his men, breaking them in to show them how we have safety laws, breaking them in to the extermination field.

Q. Why was that necessary with respect to Charlie Brewer?

A. When he was sent up here, he wanted to keep an instructor here to help him.

Q. Do I understand you that he had not completed a sufficient [51] course to know what to do up here?

A. That is right.

Q. How long did he continue under your instructions?

A. Mr. Carl Duncan was in the employ of Charlie Brewer, as of the letter of the 24th.

Q. The 24th?

A. Of June—July.

Q. What year?

A. 1947.

Q. You mean by that he was continuously under the instruction of Carl Duncan?

A. So far as working up here was concerned. Carl Duncan was our field instructor.

Q. Was Brewer continuously under his instruction?

A. That is right.

Q. What is Exhibit No. 23?

(Testimony of Theodore C. Sibert.)

A. It is the time slips for Raymond Rightmire.

Q. Located where?

A. Portland, Oregon.

Q. What was Rightmire doing here?

A. He is a serviceman.

Q. What do you mean by "serviceman"? What did he do?

A. Service; puts out poisons and takes care of our instructions, how to do certain things.

Q. State whether or not, after having trained these men, you [52] make any effort to keep them abreast of the times on any products?

A. Yes. We get all the literature we can that is put out. Mr. Bushing has contacts and that literature is sent out to him—sent out to the field men by the branch manager or franchise manager.

Q. Look at Exhibit 24 and state what that is?

A. This is an authorized magazine, I know. It is wonderful information that is in these magazines for a pest control operator.

Q. What is the name of that?

A. "Pest Control and Sanitation, Home and Garden."

Q. Is that provided to employees?

A. We buy this magazine and send it to the branches, so the employees can have it.

Q. Look at Exhibit No. 25.

A. This is also the same information from Hyman & Company, Denver.

Q. Relating to what?

A. Insect information.

(Testimony of Theodore C. Sibert.)

Q. Was that also provided for the employees?

A. It is.

Q. Is it a good publication?

A. It is a good publication.

Q. What is No. 26? [53]

A. The same material. That is something new in the field; spray barns for flies. It is a very good publication.

Q. Now, Mr. Sibert, have you in general, without going into great detail, covered your pest control business, beginning with the training of the employees and what is done to keep them acquainted with the progress of pest control, in general? In general, have you covered that?

A. I believe I have, in general, sir.

Q. How long have you known Charles P. Brewer? A. I believe in October, 1945.

Q. What was the occasion of your meeting him?

A. I met him in a home in Oakland, California.

Q. Did you subsequently come to be associated with him in business? A. Yes.

Q. How did that occur, and when did it occur?

A. Mr. Brewer came into my office the first of the year, 1946, and asked for a possible opening up in the northern country. He said he was born in Spokane and would like to come up here, in this part of the country.

Q. What did you do?

A. I took his application and told him if anything came up we would let him know.

Q. Is that Exhibit 15 that you have already

(Testimony of Theodore C. Sibert.)

mentioned? A. That is his application, sir.

Q. What then happened after you took his application in January?

A. There was an opening come up and he happened to come in just about the time there was an opening come up in Portland.

Q. When did he start training for the Paramount Pest Control Service?

A. February 4, 1946.

Q. How long did he train?

A. He come up while he was still in training.

Q. Did he subsequently come to the Northwest?

A. He come to the Northwest around April 1st.

Q. Whom was he serving at that time? In whose employ was he?

A. In the Paramount Pest Control Service.

Q. What was it at that time?

A. A co-partnership.

Q. A co-partnership of Fisher and yourself?

A. That is right.

Q. How long did that continue?

A. To the first of July.

Q. What happened then?

A. He started on a franchise basis, 80-20, sir.

Q. Now, it is claimed by the defendant, Brewer, in this case, and stated to the Court in opposing counsel's opening statement, that he was practically compelled to accept this franchise agreement of July 1, 1946. State whether or not Mr. Brewer had [55] signed the franchise agreement prior to that time?

(Testimony of Theodore C. Sibert.)

A. Mr. Brewer, before he came to work for us, was hired specifically for this job; we showed him the basis on which we worked men in this country; we gave him the exact terms which he signed and was working under and he took them home, and he knew exactly the basis—in fact, he made us promise before he came up here just what basis he would work on, and we kept our word.

Q. Did he sign any instrument at the time he came up here in April? A. He did.

Q. What was that?

A. That was a branch manager agreement.

Q. Did he read it before he signed it?

A. He did.

Q. When it came to the franchise—you call it a franchise. When he made his sales agent's agreement of July 1, 1946, when did Mr. Brewer get a copy of that? Can you give the date and time?

A. Yes.

Q. When was it?

A. He got a copy of that two days before he come to work for us and took it home. You mean of this specific—he got a copy of the exact—

Q. That does not mean anything. [56]

A. The difference is it is blank.

Q. You say it is blank?

A. No. The district in which he works and his boundary lines, exactly the same.

Q. Otherwise the form you gave him was exactly the same as the executed franchise?

A. It is, sir.

(Testimony of Theodore C. Sibert.)

Q. When did he get that form?

A. Two days before he came to work. That would be February 2nd. You mean this form in front of us?

Q. Yes.

A. This form, he got that the first of July.

Q. When did he get that form so that he could know the contents of this exhibit?

A. He had it two days before he came to work, which would be February 2nd.

Q. Then, do I understand you correctly that you say he knew of this franchise form from February, 1946, to July, 1946?

A. Yes, sir.

Q. Did he ever ask you any questions about it?

A. No, sir. Excuse me. Correction, sir. We had talked it over as to the things about it and he asked questions at that time before he went to work for us.

Q. Before he went to work?

A. Yes. [57]

Q. At the time he signed this exhibit, No. 7, the sales agent's franchise, did he know the contents of it?

A. They were explained to him, yes, sir.

Q. Do you recall where Mr. Brewer signed that agreement.

A. Signed that agreement in Portland.

Q. Where was it signed by Mr. Fisher?

A. In Oakland.

Q. Has that agreement been recognized by the parties since it was signed?

A. It has.

(Testimony of Theodore C. Sibert.)

Q. After July 1, 1946, how long was it before the instrument was actually signed, do you know, by both parties?

A. Mr. Brewer signed this, I think, before July 1st and Mr. Fisher, and then it was mailed out to me. I was not in the office and Mr. Fisher sent it out around the first of July, and it was sent back to him.

Q. How long was that agreement in that form lived up to by the parties? Was any change ever made in that agreement?

A. Only change of payment.

Q. Relating to what paragraph of that instrument? A. 5.

Q. Paragraph 5. What was the change made at that time in Paragraph 5 in the matter of payment?

A. The agreement by Mr. Brewer and myself on September 12th.

Q. What year? [58]

A. 1946, in the breakfast room. An agreement—

Q. Whereabouts? A. At his home.

Q. Whereabouts? A. In Portland, sir.

Q. Portland, Oregon? A. Yes.

Q. What was the agreement and why did you make it?

A. Our visit with them was very friendly. Of course, I guess that is immaterial. Mr. Brewer had a plan and that was an extension plan. He gave me a list of potential business that he could sign

(Testimony of Theodore C. Sibert.)

up and he expressed himself as to the cost of the signing up of new business, which is true.

In other words, he told me if he could afford it he could sign up enough monthly business to bring the present business up to \$3,000 monthly basis in Portland. Then he brought up the amount of money which he had drawn as a drawing account, and I expressed myself in this manner, that I appreciated a man that wanted to expand the business and I didn't want to make any hardship on him, and if he had taken so little home a month that I would match that dollar for dollar and that would give him a surplus to take care of this expansion of business which he said he had in mind.

That was merely a verbal agreement and that was supposed to be—We talked that we would go back from July 1st, [59] 1946, and end January 1st or December 31st.

Q. December 31st of what year?

A. 1946.

Q. You say that you expressed yourself. Was that said to Mr. Brewer?

A. That always has been said.

Q. Was this said to Mr. Brewer?

A. It was said, yes.

Q. Did you, thereafter, go on that basis for the period of time from July 1, 1946, to December 31, 1946?

A. We did.

Q. And it was on your personal responsibility that you did that?

(Testimony of Theodore C. Sibert.)

A. Yes—No, sir. I have to report to the Board.

Q. Did you do so? A. I did, sir.

Q. When? A. In December.

Q. This occurred when; this conversation with Brewer occurred when? A. September 12th.

Q. And you reported it to the Board in December? A. In December.

Q. Why didn't you do it before?

A. It slipped my mind.

Q. When you did report, to whom did you report? [60]

A. To Mr. Fisher and Mr. Hilts.

Q. Was it satisfactory? A. It was.

Q. Now, there is a claim on the record by Mr. Brewer that this adjustment was on the basis of a division of the profits. Was that agreement ever made? A. Never.

Q. He claims it was made about Thanksgiving time in November—November, 1946. Was any agreement of that kind made in November, about Thanksgiving time in November, 1946, or at any other time? A. No, sir, there wasn't.

Q. Did you see Mr. Brewer in November?

A. I did, sir.

Q. Where?

A. He come down from Portland to visit and to relax, he said.

Q. Where did you see him?

A. At my home.

Q. Anyone with him? A. His wife.

(Testimony of Theodore C. Sibert.)

Q. How long did they stay at your home in November? A. Ten days.

Q. Was there any feeling—Or, what was the attitude between you and the Brewers, your family and the Brewer family at that time?

A. Very close, sir. We had a good time; no disturbance whatever. [61]

Q. Was there any mention of business?

A. Oh, no, no mention much of business; just expansion and, of course, there was talk at that time about certain men he had in his employ, but that is all, little short talks.

Q. He states in one place that he went to the office and complained to you that he could not get along on the basis that you allocated to him. Was there any such a thing as that? A. No, sir.

Q. Did he come to the office at all?

A. He did, for a little while.

Q. For what purpose?

A. To pick up chemicals to bring back.

Q. After you talked to Mr. Brewer in November, when did you again see him?

A. January 20th.

Q. What year? A. 1947.

Q. Where?

A. In the office, at Portland, and also at his home.

Q. Did you stay at his home then?

A. Yes, that night I stayed at his home.

Q. Was there anything said or done in connection with either the agreement—By the “agree-

(Testimony of Theodore C. Sibert.)

ment'' I mean the franchise—as of July 1st or the dollar-home dollar-company agreement of September 12th, 1946? [62]

A. It wasn't mentioned, sir.

Q. What, if anything, relating to this business did you discuss on January 20th?

A. Mr. Brewer expressed himself about the Eastern Oregon run. He had the complete total of miles, the cost of operation, the long distances between stops, so to speak, and expressed himself that it was costing a lot of money to run the Eastern Oregon run. He asked me what we could do about it and we went into a separate deal. He needed help; he was up here by himself; he needed help to come in and help him, so I agreed that I would go back to Oakland and would send the accounts that we had in Eastern Oregon and I would take a salesman and a company serviceman——

Q. When you say "I", whom are you referring to?

A. We.

Q. To your company?

A. I refer to our company.

Q. Yes. All right.

A. This would take a salesman and a company serviceman, and we were to run that Eastern Oregon run, take a whole month for it; we would start in the south and come up to Portland and take a whole month and work.

Q. Whereabouts in the south?

A. Start at Klamath Falls.

Q. Yes.

(Testimony of Theodore C. Sibert.)

A. And work right straight around the route, to build up a [63] route and then, if it wasn't built up in one month's time, to make the trip back, and then go back home to Portland. We agreed to the payments and the cost of this investigation; with the men on the payroll of Oakland we would continue to leave them on the payroll, and keep a separate and complete accounting of all costs, hotel bills and expenses and, at the end of the venture, if there was anything made in the venture, the Oakland office and the Portland office would divide that dollar for dollar. If there was anything lost, the Oakland office would take their dollar loss and the Portland office would take their dollar loss.

Q. When you say "Portland office", do you mean yourself or do you mean Mr. Brewer?

A. Brewer.

Q. When you speak of the Portland office you are referring to Brewer, the agent?

A. He was the agent.

Q. What was done in the matter of expenses and salaries of these men?

A. We paid all or most of the salaries. There was a little that Mr. Brewer paid, but we paid practically all the salaries and expenses.

Q. What was the agreement with respect to salaries and expenses?

A. Well, we would make an accounting of it and we would pay the salaries of the men.

(Testimony of Theodore C. Sibert.)

Q. You mean your company would pay the salaries? [64]

A. Yes. Our company would pay the salaries and expenses and finance the trip and divide the remuneration out of it and we would split the costs—we would split the remuneration or the loss.

Q. I will repeat this by way of summary to see if I have got you correctly. The expenses of this trip, including costs and salaries, were to be divided equally between Brewer and your company?

A. Yes.

Q. If there was a loss, it was so shared, is that right? A. Yes.

Q. And if there was a profit, it was so shared?

A. Yes.

Q. Do you know how it turned out, whether there was a loss or a profit?

A. There was a loss.

Q. Has Mr. Brewer ever paid any portion of that? A. No, sir.

Q. I presume you went ahead and carried out this separate agreement that you have described? That was done by the parties, was it?

A. Yes.

Q. Whom did you send out from the Oakland office? A. DeGrey Brooks and Jack Ahern.

Q. When, after January 20, 1947, did you again see Mr. Brewer? [65]

A. When did I, after the January trip?

Q. Yes. A. March 29th.

Q. What was the occasion then?

A. Our regular trip up here.

(Testimony of Theodore C. Sibert.)

Q. Anything said or done at that time in relation to this business that bears on this case, that you can recall?

A. You mean our agreement of September 12th?

Q. Was that discussed then? A. No, sir.

Q. Did your discussion at that time bear on any matters here at all? A. No, sir.

Q. What did you discuss, generally?

A. Just things in general.

Q. When, after March, did you again see Mr. Brewer? A. June 22nd.

Q. Where? A. June 17th. Correction.

Q. Where? A. In Portland, Oregon.

Q. Who was present?

A. Mr. Hilts, myself and Mr. Brewer.

Q. Who is Mr. Hilts?

A. One of our associates, our auditor. [66]

Q. What was discussed at that time with Mr. Brewer present?

A. Things in general was discussed. There was two or three outstanding things. Mr. Hilts made the audit of the books and then we made a budget, which I always had when I came in it, to find out how much business I done and how much it cost and, naturally, being president of this concern, I like to see everybody make a profit.

Q. Go ahead.

A. Mr. Brewer, Mr. Hilts and myself went over his books. We took a recap of the cost of each man that he had working for him, the payroll, the expenses, the car allowance, also the rent, telephone

(Testimony of Theodore C. Sibert.)

charges, advertising, his expenses, and allowed \$150 for an office girl.

We deducted that from the amount of business done in May, added 20 per cent as of the 80-20 agreement, and it came out that Mr. Brewer's part would be \$855.

Everything was very congenial. Mr. Brewer expressed himself that he couldn't afford to stay on the dollar-for-dollar agreement.

Q. Why?

A. Because the budget showed that he could make more money on the 80-20 agreement, as in the franchise.

Q. Was there any \$3,000 figure in there?

A. Well, that had ended my verbal agreement as of September 12th, although I didn't bring that up or didn't bother him. Mr. Brewer's [67] agreement was that if we would match the few dollars he would take home he could have the business built up by the first of the year, up to \$3,000, and it never occurred, but that was the basis. It showed a balance—it showed that Mr. Brewer had done \$3,000.

Q. When did that show?

A. The last of May.

Q. 1947?

A. 1947, yes.

Q. Was that taken into consideration in your budget?

A. Yes. That wasn't in our verbal agreement, although I didn't press anything.

(Testimony of Theodore C. Sibert.)

Q. Do you mean that the verbal agreement of, September 12, 1946, ran clear through to May?

A. The agreement—

Q. Did it or didn't it run clear through to May?

A. We allowed it to run clear through to May.

Q. When did you make that agreement? In other words, I don't think you understand me. When you made the agreement of September 12, 1946, did that agreement run clear through to May of 1947? A. No.

Q. When did it run to?

A. It ran from July 1, 1946, to January, or December 31, 1946.

Q. What did you mean by saying that the verbal agreement was [68] taken cognizance of?

A. As I remember our agreement, Mr. Brewer went back on the 80-20 in January or possibly February.

Q. That does not answer my question. What bearing did it have on May, 1947?

A. May, 1947, we, ourselves, because of this Eastern Oregon expense and loss, put the Portland office back on the dollar-for-dollar.

Q. When did you do that? A. May 15th.

Q. Did you see Brewer at that time?

A. No, sir.

Q. By whom was that agreed to?

A. In conference with Mr. Hilts and myself.

Q. Was Mr. Brewer present? A. No, sir.

(Testimony of Theodore C. Sibert.)

Q. Was it at his solicitation? A. No, sir.

Q. How was he notified of it?

A. By letter.

Q. What was the date of that letter?

A. May 15th.

Q. March 15th, isn't it?

A. March 15th. As I recollect, March 15th.

Q. March 15th? [69] A. Yes.

Q. When you have been saying "May" all the way through, that was in error?

A. That is right, Counsel.

Q. I want you to refer to Exhibit No. 29 and ascertain if that is the letter you have reference to?

A. It is.

Q. What is the date of that letter?

A. March 15, 1947.

Q. Do you wish to correct your testimony to conform to March rather than May?

A. I was confused. I wish to correct my testimony.

Q. Going back to this conference in June, state what you did with respect to the adjustment, if any, of profits over the period from January 1st to June 30, 1947?

A. Mr. Hilts had been north and had received word that the Eastern Oregon venture, which I mentioned before, that separate deal, was getting bad; he had got reports from Mr. Brewer, so we had a meeting, and Mr. Hilts had not very definitely understood the deal that Brewer and we made; he heard about it but he didn't understand

(Testimony of Theodore C. Sibert.)

it. That was the first meeting we had had with Mr. Hilts; he had been out of town and it was the first time we had gotten together for quite awhile.

We figured, as to Eastern Oregon at the time, on putting in this new work to make the Eastern Oregon district pay, [71] that it would be nice to show Brewer that we were not a company that would demand everything, you know, but would help him and cooperate with him, so we, ourselves; although he had paid his January and February franchise on the 80-20 basis, as per agreement, we thought it would be nice to show that we were trying to work with him and not take advantage of him, and that we would go back on the dollar-per-dollar agreement, and that is what we tried to explain in this letter.

Q. What letter are you referring to?

A. Exhibit 29, your Exhibit 29.

Q. That is the March 15th letter?

A. The March 15th letter.

Q. All you have said has been relating to a matter in March, 1947? A. Yes.

Q. What my question asked for was in June.

A. Oh.

Q. I think you still have the dates and the times confused, Mr. Sibert. A. I am sorry.

Q. It is all right. As I understand, all you have said shows why you wrote the letter, why the letter of March 15th was written by Hilts to Brewer?

A. Yes.

(Testimony of Theodore C. Sibert.)

Q. Calling your attention to June of 1947, not March but June—— [71] A. Yes.

Q. Did you have an accounting with Mr. Brewer in June? A. Yes.

Q. Who was present?

A. Mr. Hilts, myself and Mr. Brewer.

Q. Did Mr. Hilts compile a statement at that time of the financial obligations between Brewer and the company? A. Yes.

Q. Do you know whether or not it was discussed with Mr. Brewer? A. It was.

Q. Do you know whether or not it was agreed to by Mr. Brewer? It was.

Q. How do you know? A. I was there.

Q. Any other reason?

A. Well, I was there and heard it, and that was the time we made the budget that I was talking about.

Q. Did Mr. Brewer make any payment at that time? A. No. We asked for it.

The Court: Recess until one-thirty.

(Recess to one-thirty p.m.) [72]

(Court reconvened at one-thirty o'clock p.m., January 20, 1948.)

Direct Examination

(Continued)

By Mr. Rankin:

Q. I think when we closed our morning session, Mr. Sibert, I was directing your attention to June 20th, the conversation between Mr. Hilts, Mr.

(Testimony of Theodore C. Sibert.)

Brewer and yourself, and you had testified concerning the March 15th arrangement.

Now, again directing your attention to June 20th—I have called it June 20th; I think the exhibit was dated June 20th; but when was your visit here?

A. I came up on June 17th.

Q. You came up here on June 17th?

A. Yes.

Q. Whenever we designate that conference, whether it was June 17th or 20th, we are talking about the time when you, Hilts and Brewer conferred on the amount that was due to Paramount from Brewer. A. That is, 1947?

Q. June 17th to 20th, 1947. A. Yes.

Q. So that we will have this clear, it is not related to the March conference. Will you state where you met in this June 17th conference?

A. In the Paramount Pest Control office of Portland. [73]

Q. Where is that office located?

A. Southwest Park.

Q. Was there an office there before Mr. Brewer took charge? A. Our office down there, yes.

Q. Where was that?

A. In Mr. Taylor's home.

Q. In this June 17th conference, who was present? A. Mr. Hilts, myself and Mr. Brewer.

Q. What was discussed in relation to this business at that time?

A. There was a recap made of his business, a recap made of his business, as of May, the end of

(Testimony of Theodore C. Sibert.)

May. Mr. Hilts took the figures off the books, and then we three made a recap, a budget—we took the wages of each man, took the expenses, the chemicals used, gasoline, auto expense, rent, advertising, phone, all things pertaining to the business, as far as costs was concerned. Then we took 20 per cent of the gross business done, deducted that from the business in May and there was \$855 left for Mr. Brewer.

Q. How much did you get?

A. Six hundred—20 per cent.

Q. You do not mean 20 per cent of \$855? \$855 and \$600 made a total of so much. Is that what you mean, something like that? A. No.

Q. Tell me this: Did Mr. Hilts, as your auditor, make a detailed accounting? [74]

A. This budget, you mean? That was done by Mr. Hilts, myself and Mr. Brewer.

Q. Then was there a statement made as to how much Mr. Brewer owed the company?

A. There was.

Q. Who compiled that statement?

A. Mr. Hilts and Mr. Brewer.

Q. What was the nature of the conversation as to whether or not it was friendly or disagreeable, in any feature? A. It was very friendly.

Q. Did Mr. Brewer have any criticism or objection to anything that was done by the company?

A. No; very friendly.

Q. The record shows that he claims to have told you at that time that unless you carried on with

(Testimony of Theodore C. Sibert.)

the contract he had in mind, he was going—he was quitting you. Was anything said by Mr. Brewer about his leaving Paramount Pest Control Service?

A. Nothing whatsoever.

Q. You say in your testimony that the relationship was friendly. On what do you base that statement?

A. Well, when we made this budget, we agreed at that time to extend the dollar-for-dollar deal to the end of the fiscal year.

Q. That was when?

A. That would have been June 30th, and then go back on the [75] regular franchise, which was the 80-20 payment.

Q. Did Mr. Brewer know that?

A. This was his suggestion.

Q. How do you mean it was his suggestion?

A. Well, he stated that he could make more money according to the budget on the 80-20 payment than he could on the dollar-for-dollar.

Q. Could he?

A. Yes. It, I think, was understood.

Q. Will you state whether or not that was understood, that he wanted to go back on the franchise?

A. It was understood.

Q. Was there anything in your relations, other than what you have described, that disclosed their friendliness?

A. Well, Mrs. Brewer was down south. She left before I arrived in Portland. It was his little girl's birthday, and I suggested, before I left Seat-

(Testimony of Theodore C. Sibert.)

tle, that if we could get plane reservations, that he and the little girl go back with me as our guests for the little girl's birthday present.

When we got to Seattle—We tried to get reservations in Portland. They were received in Seattle. I called him from Seattle and told him I had the reservations and was going to Spokane, and I got his reservation and the little girl's reservation and made a reservation on the same plane. The plane stopped in Portland. I got off, got his tickets, and we went [76] to San Francisco.

Q. Did the little girl go with you?

A. She did.

Q. Did you meet Mrs. Brewer or not?

A. Mrs. Brewer, her sister and my wife met us at the airport in San Francisco.

Q. Where did they stay?

A. They went home that night with Mrs. Brewers' sister and then came over to my place.

Q. Where? A. In Oakland.

Q. How long did they stay there?

A. Four days—five days.

Q. Was anything said that seemed to disturb the friendship during that period?

A. We left very good friends.

Q. Was any suggestion made at that time in connection with any of the business that he had been doing here?

A. Everything seemed to be very fine and cordial and everything was good.

(Testimony of Theodore C. Sibert.)

Q. I have reference particularly to what I understood was some question about collections.

A. Oh, yes. Mr. Hilts notified me over the phone there were a lot of accounts receivable.

Q. Did you take that up? [77]

A. Oh, I spoke to them about it.

Q. State what their attitude was?

A. There was no attitude, so much, to me. Mrs. Brewer seemed to have gotten mad over something. I don't know that it was over that or what it was, but it was nothing, as far as we were concerned.

Q. When did you again see or hear from Mr. Brewer?

A. I saw Mr. Brewer in the hotel room next after he had sent in his letter that he was quitting, in August.

Q. You say he sent in a letter? A. Yes.

Q. Refer, in those exhibits you have there, to Exhibit No. 42. I will ask you if that is the letter to which you have reference. It is in the file here. I will ask you if that is the letter to which you have reference?

A. Yes, this is the letter of June 24th.

Q. July, isn't it? A. July 24th, yes.

Mr. Rankin: Your Honor, this letter is pleaded in the pleadings. I shall not take the time to read it.

Q. I note a provision of the franchise in which there is a 90-day provision for terminating it. Is that the letter upon which the termination was based? A. It is not.

Q. What was the termination? [78]

(Testimony of Theodore C. Sibert.)

A. This is the letter upon which the termination was based, yes.

Q. That is what I mean, but not in compliance with the contract?

A. It was not in compliance with the contract.

Q. When did you receive that letter?

A. This letter came into my office June 26th. It was written June 24th.

Q. It shows on its face it is July.

A. I mean July. I am sorry. July.

Q. Had there been anything, up to the date of the reception of that letter, in July, 1947, that indicated to you that Mr. Brewer was dissatisfied with his association with Paramount Pest Control Service?

A. Nothing whatever. It was just the reverse. He always said he had the best business in Paramount Pest Control Service, always bragged on it, and was very satisfied.

Q. Had there been anything indicating a dissatisfaction on Mrs. Brewer's part prior to the time of the reception of that letter?

A. Nothing that I know of, sir.

Q. Did she ever tell you anything that she was dissatisfied about?

A. Just a few different things, which I paid no attention to.

Q. Anything about the compensation her husband was receiving?

A. Nothing. I never talked those things over, only with the parties involved. [79]

(Testimony of Theodore C. Sibert.)

Q. What did you do when you received this letter?
A. I was on my vacation.

Q. Did the Brewers know you were going on a vacation?
A. They did.

Q. How did they know that?

A. It was talked about when they were at my house, as my house guests.

Q. When did you go on your vacation?

A. Well, let's see——

Q. Where, first, did you go on your vacation?

A. Up to Strawberry to build a cabin, with my wife.

Q. Where is Strawberry?

A. In California.

Q. Were you there when this letter was received?

A. I was up on my vacation, yes sir.

Q. What did you do when you got this letter?

A. I immediately came into Oakland and then came up here.

Q. What did you do while you were here?

A. I called Charlie up and asked him to come and release the chemicals and equipment which he had. He came up to my room. He had refused to do that heretofore. He came up to my room and said he would release them.

Q. Did he then give you any explanation as to this letter or any reason for his termination?

A. His explanation was only one, that he had to do it on account [80] of his family.

(Testimony of Theodore C. Sibert.)

Q. Did he say why he had to do it on account of his family? A. He did not.

Q. Generally speaking, without going into detail, did you find then that there was any solicitation by Brewer, from your investigation and service with the company, of any of the patrons that had theretofore been patrons of Paramount Pest Control Service?

Mr. Bernard: Object to that as calling for hearsay testimony.

The Court: He may answer.

A. I sure did.

Q. (By Mr. Rankin): Did you find that there had been some solicitation?

A. Everywhere our boys went they found that trouble.

Q. Now, a few questions that I think possibly I overlooked as I ran through this hurriedly. Did you expend any money in the organization of this business?

A. I have, lots of money.

Q. Can you give the Court any idea of how much and on what phases of it you expended this money?

A. You mean the business in Portland?

Q. No. I mean the business in general, first, and then in Portland.

A. Yes. We take a certain amount of our profits to experiment with—— [81]

Q. Just a moment, Mr. Sibert. Let us go back to the beginning. I realize it is going back to what

(Testimony of Theodore C. Sibert.)

you testified to, to some extent, this morning, but when you formed this business, you and Fisher, as a partnership, did you expend any money then?

A. We expended everything we made into establishing this business, every effort—That took all we had.

Q. Was that the original expenditure—I mean, was the original expenditure all that you had put in?

A. Oh, we put everything that we had in the world into this business.

Q. But, subsequent to its origin, state whether or not you still made expenditures in behalf of it?

A. We did continue to do that. We spent money for education, for experimental work, and for getting the best chemicals to apply to these specific insects that will work the best for us.

Q. I don't think I asked you anything about Duncan. When did Duncan come into your employ?

A. In 1942.

Q. And what did he do?

A. He was a serviceman for quite a few years and he was very adaptable to teaching field men, to break in servicemen, show them the correct way to distribute the poisons, and to mix the inert ingredients in certain poisons and place them in a safe place—in containers and so forth, that is necessary to keep from contaminating foodstuffs and injuring carpets, varnishes [82] on floors and so forth.

Q. Was he a very good man in your employ?

A. Duncan was a very fine employee.

(Testimony of Theodore C. Sibert.)

Q. I think you testified this morning you sent him up here to instruct Brewer. Did he continue to remain in the employ of the company after you sent him up here? A. Yes.

Q. When did he terminate his services, as far as you know, with Brewer? That would be August 1st, 1947? A. Yes.

Q. Have you tried to get service upon him in this case? A. I have, sir.

Q. Do you know Merriott?

A. Not personally. He was hired— I don't know Merriott personally.

Q. Did Mr. Brewer ever ask you for permission to hire Merriott? A. No, sir.

Q. Is that a desirable feature of your contract, that you ask the agent to tell you whom and when he employs men? A. The contract——

Q. Is it a desirable feature of your contract?

A. No, it isn't.

Q. You don't understand my question.

A. I am sorry.

Q. What? [83]

A. It is desirable. I know what you mean now. It is a desirable feature of our contract.

Q. Why?

A. Because we know we have more experience in hiring men than these men do out here, and it is in our contract that we desire to help hire their men, and we reserve the right to eliminate them from the service at any time.

(Testimony of Theodore C. Sibert.)

Q. State whether or not they have a responsible position in the performance of work in connection with poisons? A. That is true.

Q. How much of the information as to these formulas and methods of application and so forth did you give to your employees?

A. All that is necessary, so that they can do their work in an efficient professional way.

Q. Did you give them the detail of the composition of any of your formulas and poisons?

A. You mean the formulation of the formulas themselves?

Q. Yes.

A. Only to the extent where they must insert the inert ingredients.

Q. Did you ever know, in connection with Mr. Rightmire, Mr. Duncan or Mr. Merriott, that they were leaving your employ prior to the time that they went with Mr. Brewer?

A. I knew nothing. It was a big surprise.

Q. They never notified you, either verbally or in writing? [84] A. No, they didn't.

Q. Did they ever personally give you any explanation why they left you?

A. They did not.

Q. Did you, at the time you came up here, ask for and secure an inventory from Mr. Brewer of whatever he had that you were entitled to purchase under your franchise? A. I did.

Q. Did you get the inventory?

A. After I got here, we got the inventory.

(Testimony of Theodore C. Sibert.)

Q. Did you get delivery of all materials that you found by that inventory you had a right to purchase?

A. We got delivery of what was in the warehouse.

Q. Were there other materials that you did not get delivery of? A. Yes.

Q. This letter that is in evidence as terminating his association mentions that he might want some of these things "in the future." Do you know what he had reference to when he states he might want those things "in the future"?

A. I did not.

Q. With respect to his living up to his contract, were there any features that you recall that he did not perform which, under your operation of the company, he was required to do? For example, let me expedite this so as not to take too much time in your consideration. [85]

The contract provides, Paragraph 4, Page 2 of the contract, that he will take all contracts in the name of the company. I mean, take contracts in the name of Paramount Pest Control Service?

A. Yes.

Q. Will you turn to Exhibit No. 40-A.

A. I have it, sir, 40-B. Just a minute. 40-A.

Q. Is that supposed to be in the name of Paramount Pest Control Service?

A. 40-A is an expense account.

Q. Let me see it. May I see it, please? I probably have the wrong number here, apparently. Yes,

(Testimony of Theodore C. Sibert.)

that is the wrong number. There are two 40-A's apparently.

What I have reference to is this Indenture of Lease, "Made this 1st day of November, 1946, by and between The House of Celsi, an Oregon partnership, hereinafter called the Lessor, and C. P. Brewer, doing business as the Paramount Pest Control Service, 519 N. W. Park Avenue, hereinafter called the Lessee."

First, how do you indicate whether you have serviced a particular place or not?

A. We have a card that we hang up.

Q. Is that the card?

A. That is our card.

Q. It reads: "To Our Patrons. We have Paramount Sanitary System. An assurance of cleanliness." [86]

Did Mr. Brewer put out a similar card when servicing patrons? A. He did.

Q. Is this the card?

A. This is the card.

Mr. Bernard: Have you got an exhibit number on that?

Mr. Rankin: Yes, just a moment. It is 40-A. There are two 40-A's.

Mr. Bernard: That is all right. That is close enough.

Mr. Rankin: I also want to offer in evidence, your Honor, a bill of sale. No, that has been offered—I am sorry. But I do want to call this to your particular attention because it is the one Mr.

(Testimony of Theodore C. Sibert.)

Sibert signed afterwards. Do you gentlemen have any particular objection to this because of that fact?

Mr. Bernard: No.

Mr. Rankin: Thank you. You may cross-examine.

Cross-Examination

By Mr. Bernard:

Q. This partnership, you say, was formed in 1937, was it? A. No, sir.

Q. What year? A. 1938.

Q. Had you been in the pest control business prior to that time? A. I had. [87]

Q. What other work—

A. I want to answer that exactly right. I had been in business, but not for myself before.

Q. What other business were you doing at that time?

A. I am a general contractor, building superintendent, carpenter work, cement work, plaster work.

Q. How long did you continue those occupations after 1938?

A. I never continued those only in my own work.

Q. Did you continue in those occupations?

A. Only in our work. When we first started, I worked at carpenter work.

Q. How long did you continue in those occupations after 1938?

(Testimony of Theodore C. Sibert.)

A. You see, sir, those occupations is in our business. We do termite work. We are still continuing carpenter work, cement work and plaster work.

Q. What other business was Fisher in at the time the partnership was organized?

A. He was in the extermination business.

Q. Where was your place of business when Brewer went to work for you?

A. This is '38. The head office was 638 Sixteenth Street.

Q. Where? A. Oakland.

Q. How big a place did you have?

A. We owned our own building—we own our own building and [88] have quite a space.

Q. How big a place?

A. I don't know the exact size of the building.

Q. What date was it Brewer came to work for you?

A. July 4th, according to our records. February 4th; sorry, February 4th.

Q. February 4th? A. 1947.

Q. What date did he come to Portland?

A. Around the first of April.

Q. You have referred to certain labels which are in evidence here. Those labels are put on the cans of poisons or preparations, aren't they? These labels that you referred to in your evidence are put on the cans of poisons or preparations?

A. Yes, sir.

(Testimony of Theodore C. Sibert.)

Q. Those labels contain the ingredients, do they?

A. Those labels contain the ingredients that are in the cans.

Q. So anybody that got hold of one of the cans could see what the ingredients are?

A. That is right.

Q. You say you do not put on the label the inert ingredients?

A. I did not. Some labels you do and some labels you don't, but the inert ingredients, they have to be in there.

Q. What is there that is secret about these concoctions or formulas that you give your salesmen to use or the other men [89] who work for you to use? What is there secret about it?

A. You understand, Mr. Bernard, the contents of the label is merely the quantity to the gram. That is on the label on the package. That is the law. The secret is the formula in which they are melted or mixed together to get a certain product to do a certain job and to kill a certain type of insect.

Q. That is the secret part of it?

A. That is the secret part of it.

Q. Did you or your company ever, at any time, furnish any of this secret information to Mr. Brewer?

A. Yes, sir.

Q. When?

A. From the time he started out to work for us. There is a certain portion of that he has to learn.

(Testimony of Theodore C. Sibert.)

Q. You mean to say you furnished Mr. Brewer any information as to how to concoct any of these formulas?

A. You misunderstand—That question can be answered Yes and No. There is certain chemicals that we concoct—You say “concoct”—We formulate certain chemicals with inert ingredients that is put out on the job. We have to show him how to do that.

Q. Describe what you mean by “inert ingredients.”

A. The inert is the volume of matter or liquids that is in the poison.

Q. I see. What do they usually contain?

A. In rat bait it is any type of stuff that will—You might [90] say, apples, carrots and so on, any type of bait—different types. In liquids it is—

Q. What is there secret about that?

A. So much of this is put in a certain formula to get a certain strength and so it could be attractive to a certain type of animal or insect.

Q. Can't that information be secured through other sources than yourself?

A. It might be, but not like Paramount gives it out.

Q. Who do you say gave Mr. Brewer this information?

A. Mr. Duncan.

Q. Did you?

A. Not personally; some, yes.

(Testimony of Theodore C. Sibert.)

Q. What information did you give him?

A. I have been with Mr. Brewer on several jobs and showed him lots of things, and we talked—gave him information of my past experience. That is why I came to see him.

Q. You tell the Court what secret information you ever gave Mr. Brewer at any time about the formulas or concoctions that you put out for bait.

A. You mean one definite, special thing?

Q. Yes.

A. You want the time and place?

Q. I want the information, what it was. Tell the Court what secret information you ever gave this man. [91]

A. I gave Mr. Brewer secret information on fly or rat baits.

Q. Information?

A. What types of inert ingredients with a certain amount of active poisons to put out as certain types of rat baits to do a certain job, to kill certain animals or insects.

Q. Can that information be secured elsewhere?

A. He can't secure my experience elsewhere.

Q. Your experience, as a matter of fact, he can secure from other sources—how to put these inert ingredients in with the poisons in order to kill rats or insects? There are other sources that put out that information?

A. We are a service organization, not a sales organization, and our formulas and our advice is more profitable to anybody than something that somebody has made for sale, and information thereof.

(Testimony of Theodore C. Sibert.)

Q. Have you been as definite as you can as to any secret information or formulas that you gave Mr. Brewer?

A. Repeat that question. I don't understand, Mr. Bernard.

Q. Have you been as definite as you can as to any secret information or formulas that you ever gave Mr. Brewer?

A. I could have give him more secrets. I was definite in what he needed and what he could take at the time, and according to the situation thereof.

Q. How long did this instruction continue down there in California? [92]

A. Until all his time there, two months.

Q. What sort of work was he doing during those two months?

A. He was doing—he was going with Mr. Duncan to be broke in our service work.

Q. He had been doing service work?

A. In going with Mr. Carl Duncan, yes.

Q. He was in your employ in the laboratory that you speak about, wasn't he? A. No, sir.

Q. When he came up here, then, in April, it was with the idea of making him manager of the Oregon territory, was it?

A. That was our understanding, sir, before he went to work.

Q. After he had been employed by you for about six or seven weeks?

A. We had that understanding before he ever went to work. I was merely keeping my promise.

(Testimony of Theodore C. Sibert.)

Q. You figured that six or seven weeks' works as a serviceman rendered him capable of carrying out this tremendously important work of insect extermination in Oregon, as manager?

A. Sir, I did not.

Q. Why did you make him manager of the concern?

A. Because he was hired for this district and we sent somebody up here to help him.

Q. That was Mr. Duncan?

A. Mr. Hilts and Mr. Duncan, yes. [93]

Q. Did you come up at the time he was employed? A. Where, sir?

Q. Come up to Oregon?

A. I wasn't here when he came. I came up in April—He came the first of April with Mr. Hilts. He brought Mr. Hilts up. Mr. Fisher arrived here April 6th, Mr. Bernard.

Q. Where was the office of the Paramount Pest Control Service at that time?

A. I don't have the exact address but it was in Mr. Taylor's home. We had phone service—we had a phone there, and we had phone service on Taylor Street. I don't remember. I could look it up for you.

Q. Was Mr. Taylor the previous manager?

A. He was.

Q. And the headquarters of the concern were out at his home, is that what you say? A. No.

Q. Where were the headquarters?

(Testimony of Theodore C. Sibert.)

A. The headquarters office and those things was in the office on Taylor Street. He merely had the poisons and things like that at his home and kept some books at his home.

Q. The poisons and things of that kind were kept at his home?

A. Yes. He had a storeroom which we were renting there.

Q. Do you know about how long Mr. Hilts was here at that time? A. I do. [94]

Q. How long?

A. Mr. Hilts came up with Mr. Brewer and I came up the 23rd of April. We passed on the way, going back. I came up on the train. He left that day to go back to get his car to come back here.

Q. Did Brewer have to take an examination in California before he came up here?

A. He did not.

Q. Do I understand you to say from the time Brewer came here to the time he wrote this letter of resignation that you had no disagreement between yourselves at all, is that correct?

A. That is correct; the best of friends.

Q. You did, however, in response to Mr. Rankin's question, call attention to the fact that he took the lease in his own name and not in the name of Paramount?

A. I knew nothing of the lease, sir.

Q. You know it now?

A. I know it now, yes.

(Testimony of Theodore C. Sibert.)

Q. Did Paramount take out some insurance for him of any kind?

A. What type of insurance?

Q. Of any kind? Liability insurance?

A. We have a broker in Oakland that writes insurance for our office there and all of our business.

Q. Do you know how that insurance was written?
A. Yes. [95]

Q. How was it written?

A. Paramount Pest Control Service, doing business as Brewer, I think.

Q. Wasn't it written Charles Brewer, doing business as Paramount Pest Control Service?

A. Maybe. I don't know. I never did see the policy, sir.

Q. Will you be as definite as you can, so we can cut the examination short? When and where was the first discussion had by you and Brewer, according to you, as to the change in the terms of this contract?

A. You mean the change of payment?

Q. Yes. A. September 12th.

Q. You say that took place in Portland?

A. Yes, in Portland, in Mr. Brewer's home.

Q. Brewer assigned as a reason for that change, what?

A. Mr. Brewer wanted to have an expansion of business, a program of putting on business, and the reason he assigned was this, that he had only

(Testimony of Theodore C. Sibert.)

taken so much money home, and asked me if I would go with him and help to finance the new business so that we could all profit thereof, and our agreement was: I said, "Charlie, I am not a big man, a big bad man, trying to take advantage of anybody. If you want to live cheap at home, I will take that same amount, up to that period of time, so that we can put this business on." [96]

Q. He thought he could make more money under that arrangement, didn't he, in the future?

A. Yes.

Q. You agreed to that?

A. I agreed for a change of payment, dollar-for-dollar payment. When Charlie would take a dollar home or if he took \$5 to live on, that is all I would take, and spend the rest in the expansion or building up new business.

Q. That was the agreement you made which you say you forgot to mention to the other men until December?

A. That is right.

Q. When was the next time that any question arose between you and Brewer as to the times of payment under this contract?

A. I didn't know there was a question, sir.

Q. When was it ever discussed between you after that, between Brewer and you, or you and Hilts?

A. We had a talk about that on the trip, June 17th.

(Testimony of Theodore C. Sibert.)

Q. How about this arrangement in March when this letter was written?

A. I didn't talk with Brewer. We just tried to show him the expenses that would be charged to him—it looked like there was going to be a charge to this district, and we wanted to show Mr. Brewer that we was still going the other mile.

Q. Do I understand, then, that this arrangement that was made in March was agreed upon by you and Hilts? [97]

A. It was. And he said in March, that was the first time it was exactly clear to him, and he thought it was a fine way to treat a company and a fellow in the field, and that was his idea. Hilts says, "Why don't you help Charlie," he said, "on this Eastern Oregon deal?" and I just consented; that is all.

Q. That was done without any previous communication between you and Brewer, is that a fact?

A. Myself and Brewer, yes.

Q. Do you know whether Hilts had talked with Brewer about it?

A. I didn't know. I wasn't here. I don't know.

Q. Did Hilts tell you whether he had or not?

A. He said Charlie had mentioned it to him.

Q. What did he say that Charlie had said?

A. Mr. Hilts is the auditor and he must have talked to Charlie about it to get, you know, a correct understanding of it, and he said Charlie merely mentioned it to him.

(Testimony of Theodore C. Sibert.)

Q. Did he tell you Charlie had objected when Hilts had presented a statement based on a 20-80 per cent beginning the first of January?

A. He did not.

Q. You say the first time you and Brewer had the matter up was in June?

A. The first time Mr. Brewer and I ever talked about anything like that except that one time was in June.

Q. You want the Court to understand that, although Mr. Brewer [98] had requested this change in 1946, although you and Hilts had agreed to continue the change in March, 1947, to help Brewer out, that Brewer told you, between the 17th and 20th days of June, that he wanted to come back on the 20-80 basis because he would make more money that way?

A. I do.

Q. You never had any idea to the contrary, that there was any trouble, until you received this letter which was written on July 25th?

A. I had no idea. I thought we were the best of friends and things were going to continue.

Q. Then, the letter of March 15th that Hilts sent out, that letter was sent by Hilts after his conversation with you, wasn't it?

A. It was, in the Oakland office.

Mr. Bernard: That is all.

Mr. Rankin: You are excused, Mr. Sibert.

(Witness excused.) [99]

E. W. BUSHING

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rankin:

Q. Give your name to the Court.

A. E. W. Bushing.

Q. Where do you live, Mr. Bushing?

A. 1325 San Francisco Street, Vallejo, California.

Q. What is your occupation?

A. I am an entomologist.

Q. How long have you been such?

A. I graduated from the University of Illinois in 1942, with a degree from the School of Liberal Arts and Sciences—majored in entomology.

From that date until September I worked for the Dupont Experimental Station in Newark, Delaware, as entomologist, not for Dupont but for the Delaware Agricultural Experiment Station.

Q. Have you had practical experience in the field?

A. Yes. After working three months for that station in the practical application of insecticides, I went into the service for three years and a half.

Q. What did you do in the service?

A. Acted as entomologist in the service, in the United States for three years, spent three months in the Hawaiian Islands, and [100] all the time I was in the hospital, in the service.

(Testimony of E. W. Bushing.)

Q. The hospital service?

A. I was in the hospital, in the service.

Q. Oh, in the service? A. Yes.

Q. Did you work in the Dupont Experimental Station and in the Army, when you were not in the hospital—Was it related to your work as an entomologist?

A. Yes, it was. I was one of the fortunate individuals who went through the service in the bracket in which he had been trained at the university. My training in the university helped me in this respect in the service. I was responsible—If any of you are familiar with Army procedure, a sanitary officer is detailed on the basis of ten thousand personnel, and charged with the responsibility of the complete routine of rodent and insect control, in addition to other duties, and I was detailed on that basis here in the United States, and at Hickham Field, Hawaii, I was Chief Quarantine Officer on all incoming ships from the Orient.

Q. Have you worked with the Paramount Pest Control Service?

A. I am in their employ in July, 1946.

Q. Are you still in their employ? A. I am.

Q. As an entomologist, do you have anything to do with rodent control? [101]

A. Yes.

Q. The experience that you have described, does that relate to rodents as well as insects?

A. Yes.

(Testimony of E. W. Bushing.)

Q. In the Paramount Pest Control Service, do you have anything to do with the matter of poisons?

A. Yes, I am directly responsible for the formulation of all Paramount's formulas.

Q. Do you have anything to do in that service in connection with pests, insects or rodents?

A. Yes, from the standpoint of issuing explanations to all the personnel as to the uses of all these formulations.

Q. Do you have anything to do with the application, the means of bringing these poisons and these pests together?

A. Yes. We endeavor to supply our personnel with the best available equipment, going even as far as first experimenting and testing it there in the Oakland office before submitting it to them for their use.

Q. In the Paramount Pest Control Service, do you come in contact with any of the field operators or the men who are doing the practical work of controlling pests?

A. Yes, I do. I am at their service at any time that they so wish, in order to assist them at any time in their work, regardless of what their problems might be; they not being able to solve it, I would be more than willing to come out and travel [102] in the case of Portland or Seattle or whatever it might be to solve these problems for them, even to the extent that I would personally help them out with these problems.

Q. I would like to hand you the exhibits relating to poisons that have been identified by the president

(Testimony of E. W. Bushing.)

of the corporation, enumerated No. 5-1 to No. 5-26, and ask you to refer to them. You are familiar with those, are you not? A. Yes, I am.

Q. You have seen them in this form as they are presented here, before? A. Yes, I have.

Q. Mr. Bushing, it is the contention of these defendants that there is nothing unique about these poisons, that you can go out and buy them on the common market anyplace.

Will you take these exhibits, No. 5-1 to No. 5-26 and explain them. Explain what there is about them that this court should know in connection with the contentions made by the defendants. Refer to Exhibit 5-1, if you will, please.

A. 5-1, Paramount Ant Syrup.

Q. Is that on the common market?

A. There are many ant syrups on the market, yes, but not the Paramount Ant Syrup.

Q. What do you mean by that?

A. We have in the Paramount Ant Syrup incorporated an unusual inert ingredient. On the label we do not have to state what [103] those are, specifically. All that is necessary to state on the label is what the active ingredients are, those poisons which are defined in connection with the registration of economic poisons in the State of California.

As I have previously mentioned, there are others on the market, but we have incorporated into the inert portion of the product an ingredient which has made this more attractive, in our estimation, to ants.

(Testimony of E. W. Bushing.)

Q. In what particulars is it made attractive, more attractive?

A. We believe it is more attractive because, if the other syrups could be placed side by side, we think we have found through experience that they will prefer to accept ours.

Q. Just to clarify one thing: Those labels seem to be divided generally into inert and active ingredients.

A. Yes, sir.

Q. Active ingredients are what?

A. Those ingredients which are required to be specified on the label. They include those ingredients found in the list of economic poisons registered by the State of California.

Q. Inert ingredients are what?

A. Inert ingredients are only that part of the formula which may be either necessary to complete that formula or—When I say that it is necessary for them to be in there to complete the formula, I mean without that chemical existing in the inert ingredient, the ultimate product could never be gotten. [104]

Q. The next one, 5-2, what is that by name?

A. No. 5-2 is Paramount Bed Bug Spray.

Q. Is that on the common market?

A. No. Paramount Bed Bug Spray is not on the common market.

Q. Is there anything unique about this Paramount preparation?

A. This is a product in which we have incorporated a highly volatile solvent. The primary reason for this highly volatile solvent being present is that

(Testimony of E. W. Bushing.)

in spraying furs, clothes closets, et cetera, the high volatility permits very little damage to the fabrics.

Q. Take the next, 5-3.

A. Paramount Bed Bug Spray F2.

Q. Is that on the common market?

A. No, Paramount Bed Bug Spray F2 is not on the common market.

Q. There is bedbug spray that is on the common market?

A. There is, yes.

Q. How does this vary from the common market variety?

A. In this formulation we have developed a DDT percentage which, in our spray, does not leave undesirable residue as, for example, upon such things as furs, rugs, et cetera. I feel that this is a decided advantage. One of the larger railroads, for instance, objected to there being too much of a powdery residual on the fabrics from the use of excessive DDT.

Q. What is the next one?

A. Paramount DDT Barn Spray, F2. [105]

Q. Is that on the common market?

A. Yes, that is on the common market.

Q. Is that registered by Paramount?

A. We have registered that Paramount formulation because, included in the formula are the directions. Without directions the formula is no good. By that I mean, the raw substance has to be included with the application and proper directions are necessary.

(Testimony of E. W. Bushing.)

Q. What is the next number?

A. Fly spray F2.

Q. What is the exhibit number?

A. This is No. 5-5.

Q. Is that on the common market?

A. No, that is not. Paramount Fly Spray F2 is not on the common market.

Q. What is unique about that?

A. We have in this product, from our experience, added an increased amount of a particular solvent. That solvent is included in the active ingredients. Any material that will aid in the destruction of insects must be included in the active ingredients. That solvent aids in the dispersal of the DDT to the extent that this product differs greatly from others if for no other reason than the results.

Q. Just for the moment, this thought occurs to me: Suppose you had an active ingredient or suppose you had a formula that contained [106] elements A, B, C, and D, and you mixed them in that order; suppose, for the purpose of insecticide or rodent control, you mixed them A, D, C and B; would you have the same result?

A. No, you would not. If you would like, I can bring one of those——

Q. Does that appear later?

A. Yes, it does.

Q. Bear that in mind and call it to our attention when you come to it. Take No. 5-6, what is the name of that?

A. Paramount Fungus Solution.

(Testimony of E. W. Bushing.)

Q. Is that on the common market?

A. No, this particular product, Mr. Rankin, is not on the common market.

Q. Is it unique?

A. It is unique from the standpoint that there are very few, if any, people, individuals, who are acquainted with fungus. Consequently, there is no market demand for fungus solutions. Fungicides must be prepared according to the individual fungus. They cannot promiscuously be made to satisfy a general requirement. This particular product is used upon identification of a specific fungus.

Q. How is that fungus identified?

A. The fungi are identified under microscopic examination only. There is no prescribed examination that is adequate. To get down to a little more detail, the actual spores in the fungus [107] growth are identified,——

Q. That is, only by laboratory facilities could you make a proper analysis of a fungus?

A. You may be able to make it only to the extent of a generalized classification; you could not, to the extent of a complete identification.

Q. Take No. 5-7, what is the name of that?

A. Paramount Insect Powder.

Q. Is that on the common market?

A. No, Paramount Insect Powder is not on the common market.

Q. Is there anything comparable to it on the common market?

A. There is a product on the market, namely, sodium fluoride, which is an accepted roach powder.

(Testimony of E. W. Bushing.)

Q. Anything unique about this, in differentiation from the one you mentioned?

A. Through our long experiments in the business, over a period of years, we have acquired from various chemical houses, the possibility of securing an unusual product from this standpoint: In the manufacture of pyrethrins, which is incorporated in this formula, there is, falling off from the mill that grinds up a flower from Japan, a dust similar to what you have when you make coffee. That dust falls off and is collected and sold. However, that dust, being in such limited quantities, is only sold to those individuals or some concern with a priority, we will say, a priority that you get through long dealings. Consequently, [108] you have here 1.45 per cent pyrethrins. The usual percentage of pyrethrins on the market, instead of being 1.45 per cent, is only .9 per cent, so that almost again as much pyrethrin is actually contained in this product, and the results are double and the efficiency is tremendous.

Q. Has it a lethal quality or not?

A. It is highly lethal, a highly lethal quality, from the standpoint of an active ingredient. That is why we have incorporated pyrethrins into this product. Sodium fluoride in itself, as I just said a while ago, is an accepted roach powder. I do not deny that or that you can find sodium fluoride on the market anywhere. I am not contending that at all but, just as in coffee, there are those that are excellent and those that are very poor. An insecticide is no different.

(Testimony of E. W. Bushing.)

Q. The next exhibit, No. 5-8.

A. Paramount Insect Spray.

Q. Is that on the common market?

A. No, Paramount Insect Spray is not on the common market.

Q. What is unique about that?

A. That is one of those products I was referring to a minute ago, where you can mix it A, B, C and D——

Q. Please tell the court about it.

A. First of all, this is an exclusive formulation of ours. There is no other formulation like it available on the market.

In respect to this particular formulation, we had used [109] this for several years. During this last summer, in Mr. Brewer's territory, as well as in Washington and in our home state, we used this particular product exclusively.

For economic reasons we decided to give one of the very reputable oil companies in this state, here in Washington, and all over the United States, the opportunity of supplying us with a product that they claimed was comparable. This product is five per cent DDT, plus the necessary ingredients which are lethane, pyrethrin, plus carbon tetrachloride, plus a petroleum base.

They came to us and, naturally, from the standpoint of economy, we are interested in having this supplied to us, so for three months, June, July and August, we used this product.

(Testimony of E. W. Bushing.)

After three months' time we had so many complaints; in fact, we even had cancellations of contracts due to this product that this extremely large oil concern was putting on the market as being comparable; in fact, they were to such an extent that we pulled back their product from use and substituted our own.

Now, at the time that this occurred, this large oil firm was naturally interested in knowing why. Consequently, they came to us and asked for samples of our product to take them to their laboratory. Their explanation as to why ours is better need not be brought in here, except to this extent, that it was proven better. When we put them back in our service again, it completely eliminated all the complaints that we had [110] had.

Q. Take No. 5-9. What is the name of that?

The Court: How many are there? Twenty-six?

Mr. Rankin: There are twenty-six.

The Court: Don't go through every one of them.

Q. (By Mr. Rankin): Will you pick out some exceptional ones that you claim to be particularly unique and particularly lethal?

A. I have some here I would like to bring out—

Q. What is the first one, the exhibit number?

A. Exhibit No. 5-20, sodium fluoroacetate technical.

Q. Is it on the common market?

A. Not by any means, no. Sodium fluoroacetate is known to the general public as Compound 1080.

(Testimony of E. W. Bushing.)

This product is by no means available on the local market. It is not sold on the local market because the Monsanto Chemical Company, which manufactures and sells Compound 1080, sees to it that the companies that do buy it have a designated amount of insurance, namely forty and eighty. You must supply a certificate that you have that amount of insurance coverage. We have insurance coverage of not only that but one hundred thousand to two hundred thousand coverage.

It is unique in this respect: It is an extremely lethal poison. There is no antidote. In addition to the fact that there is no known antidote, it is usually sold only to those commercial companies that have satisfied these requirements.

Now, in attempting to use sodium fluoroacetate technical, [111] there has been much dissension from the public about its extreme potentialities. Nevertheless, it has a place in this industry and will continue to be used.

For the information of the Court, the Wild Life Service is one that is doing excellent work in furthering and advancing this product. One of my personal friends is in the Wild Life Service and has done much of that work.

Q. Do you know how many firms or companies are qualified to secure this?

A. I don't know offhand.

Q. What is the other product that you have there?

(Testimony of E. W. Bushing.)

A. I would like to bring this particular product up, primarily because I believe it shows what the secret is about the manufacture of formulas. In fact, I believe it is one example, even though it is more prominent, you might say, than others.

That is Paramount's Termite and Fungus Mixture, Exhibit 5-21. In the Termite and Fungus Mixture, there are at least six registered economic poisons, at least six. However, going into this formulation, there are at least eight. Immediately one begins to wonder, "Why aren't those two registered?" Those are the inert portions and, in the finished formulation, there is no trace.

I mean, in this respect, which our counsel was attempting to bring out: When you mix A, B, C and D, for instance, in this formulation, that is one thing. If you were to mix A, C, D [112] and B, it does not mean that you get the same results. The additional ingredients in here are caustic soda and sulphuric acid. Should this formulation fall into the hands of some other individual, it would be totally impossible for him to totally remix the formulation, because in it there is no indication that there is caustic soda and sulphuric acid so, consequently, if he made the attempt, taking what was available on the label, the product would by no means compare in efficiency or, in fact, do the job that it was originally intended for.

Q. That is sufficient on the matter of poisons. About the pests, are you familiar with the various pests sought to be controlled by this service?

(Testimony of E. W. Bushing.)

A. There are continually developing in this field additional pests beyond those that were originally fought. By that I mean that has mostly come about as a result of the last war.

Those pests that we are concerned with are referred to in California as structural pests. Those pests are those most commonly found in homes, warehouses, theaters and so forth, and would include such things as bedbugs, ants, fleas, ticks, rodents, rats and mice, such things as those which are referred to in the structural business,—referred to as structural pests, I should say.

Q. Are there any that are becoming unusual or new in the field?

A. Yes. We have many forms of bedbugs being introduced into this country from the Orient. Of course, when one says "bedbugs," [113] the natural opinion is that they can be controlled by some product that we had before. That is not so by any means. Our specific pest, not just "bedbug" but by its Latinized name must be controlled by, we will say, a Latinized formula.

Q. Does it require any knowledge, any classification of a particular pest in order to most effectively determine its control?

A. Oh, yes. One of the best examples I can think of offhand is what is known as the common fruit fly. Unless you identify it specifically, as to the exact species, you can spray until you are blue in the face and you won't control them. By that I mean that Chlordane is the accepted control for one species of

(Testimony of E. W. Bushing.)

this fruit fly, and DDT as the control for another one. For instance, if you use DDT on one to control it and use DDT on the other, you are not going to have any results at all.

Q. Coming to the third classification, or the application of poisons to the pests, is there anything that is required, any particular knowledge or training, in regard to that?

A. Before the war it was assumed that one material, for instance, could be made and accepted for the control of all pests. That was the assumed theory and it was one that was practiced extensively.

After the war, with new ideas on organic chemicals, it was found, instead of having one product that a man was going to do this with he had to have twelve products to control twelve different insects, not that some of these products would not be [114] controlled to a minor degree. Wherever he had a job, it was suggested to this customer that it was efficient that he use only that compound specifically developed for that insect and that insect only.

If you would like for me to just give you an example: Chlordane is one of the latest products on the market. That product was put on the market just about, at least, two years ago and was slow in being used. When it first came out, it was thought it would be available to do a lot of things and was going to replace DDT, and was good for everything. In my estimation, Chlordane is good for only three insects and DDT for approximately two.

(Testimony of E. W. Bushing.)

The Court: What do you mean, "approximately two"?

A. It is used against many others with incomplete results, as you get if you use another product.

Q. (By Mr. Rankin): In the application of the poison to the insect, is there such a differentiation as killing an insect, in one instance, or having it spread, continue to spread to other insects or rodents? Is there such a differentiation?

A. You are speaking about the chemical now?

Q. Yes.

A. If I understand, you are. This is my explanation—

Q. Yes.

A. In spraying for control of various pests DDT is known not as an agent that kills upon mass dispersal but as an agent that [115] kills after it has been deposited upon a wall, for instance. The ordinary housewife, when she gets one of these bottles that has a 5-per cent DDT, returns home and disperses it around the room, but in using DDT it is essential, as it is with other products, to put the material exactly where you want it to do the job and nowhere else, not in midair where it can be of no value.

Q. Did you describe what you do, if anything, in the matter of training people to go in the field?

A. No.

Q. Will you give a brief explanation to the Court of what you do in that regard?

A. We have attempted, to the best of our ability, to train all of our personnel, either through direct

(Testimony of E. W. Bushing.)

contact, my direct contact with them, or through the dissemination of information by letter, folder, et cetera.

We have gone beyond that. We have requested them to collect any specimens they were confronted with that they didn't know about and forward them back to me, thinking that perhaps maybe they would collect something that they had never heard about and would be interested in knowing something about it. We have encouraged this tremendously. We have informed them as to the best technique of collecting these specimens and forwarding them to the Oakland office, making it plain to them that nothing could be forwarded alive through the mails—— [116]

That is a Federal regulation.

Now, to encourage them more to forward in their specimens was always at the tip of my tongue when I was out because the unfortunate thing that I was confronted with was that the average individual out in the field, while he could describe it partially, he could not describe it completely enough so I could recommend control measures. That was the reason for the specimens and that was the reason for disseminating this information that kept them abreast of all current changes in chemicals, as much as possible.

In particular, this fact: We don't want them necessarily to have information about a chemical in a scanty way only. One could do more harm by getting limited information about chemicals than you can do good. After all, it was up to us in the Oak-

(Testimony of E. W. Bushing.)

land office, and my department in particular, to choose those materials that would be used and those that would be used only in the control of each specific pest.

Q. To bring this down to the present situation, did Mr. Brewer himself ever make any application to you for information?

A. Yes, he received his training during the latter end—I can't give you the exact date. It must have been during the summer, but I received a letter in which he asked me——

Q. Was he still in the employ of Paramount?

A. Yes, he was. ——a letter in which he asked me to identify—— [117]

Mr. Bernard: I think the letter would be the best evidence. A. Pardon?

Mr. Bernard: I am making an objection.

The Court: Do you have the letter?

Mr. Rankin: I do not believe we have it.

Q. Just state in general terms what the inquiry was, if you will, and what you did in connection with it.

Mr. Bernard: I renew the objection.

The Court: He does not have the letter, he says.

Q. (By Mr. Rankin): Where is the letter, Mr. Bushing?

A. I have it in my folder in the hotel room.

Mr. Rankin: All right. I will call you back later. You may cross-examine. We will be able to produce the letter later.

(Testimony of E. W. Bushing.)

Cross-Examination

By Mr. Bernard:

Q. When did you first meet Mr. Brewer?

A. That date I don't remember exactly, sir. I would say roughly a year ago.

Q. How often did you meet him during the year?

A. I met Mr. Brewer only when he came down to the Oakland office.

Q. Once? A. At least once, yes.

Q. Where did you meet him at that time?

A. In the office; in the Oakland office.

Q. Did you give him any technical information at that time? [118]

A. None was asked, sir.

Q. Now, as I have followed your testimony, up to the time you got to Exhibit 5-8—Will you take those exhibits? A. Yes, I will.

Q. You say that Paramount products were better or you thought they were better than similar products that could be bought on the market, is that correct? A. I did.

Q. From No. 5-8, will you run through and tell us what exhibits indicate products where similar products could be bought on the market?

A. Do you happen to know what 5-8 was?

Q. 5-8. A. I have it.

Q. Paramount Insect Spray.

A. You wish me to go from there on?

Q. Yes, and give me the exhibit numbers of any products of the Paramount Pest Control Service

(Testimony of E. W. Bushing.)

where similar products could be bought upon the public market.

A. I could answer that for you by going through them, item by item, and naming the active ingredients of part of it and tell the material that is available on the local market. That product alone is not, by a long shot, a means of controlling this insect necessarily—

Q. Well, there are similar products selling on the public market, [119] where a person can buy them, or can buy the same thing as Paramount's products?

A. I wouldn't say the same thing, no.

Q. What do you mean by that?

A. The reason I say I wouldn't say the same thing is because many of these products are not on the market at all. I can name one in particular.

Q. That is what I am asking you. You say 5-8 was not on the market at all. I want to find out what other exhibit numbers refer to similar products that can be bought on the open market.

A. Paramount Moth Spray, Exhibit 5-11, cannot be purchased on the market.

Q. No. 9 is moth spray?

Mr. Rankin: No, 5-11. A. 5-11, yes.

Q. (By Mr. Bernard): Are there moth sprays on the public market?

A. There are moth sprays on the public market. There is no Paramount Moth Spray on the public market.

(Testimony of E. W. Bushing.)

Q. Go ahead and tell me what other exhibit numbers indicate products—— A. 5-14.

Q. Exhibit 5-14 is what?

A. Paramount Poison Grain.

Q. Can poison grain be bought on the market?

A. That can be bought on the public market.

Q. Yes. I asked you to run through the list of exhibits there. A. 5-19.

Q. What is 5-19? A. Sodium fluoride.

Q. Can sodium fluoride be bought on the public market?

A. Yes. That is a basic material for all of those.

Q. Go ahead.

A. I believe that is all.

Mr. Bernard: That is all.

Redirect Examination

By Mr. Rankin:

Q. In the application of these poisons to the insects, I forgot to inquire of you on direct examination whether or not there is more to the application of the poisons than just giving them to the insects? Are there other interests to be considered? Do I make myself clear? A. No, sir.

Q. How about furniture, children, and the other things that poisons might affect, which are not intended to relate to them? Do you have to guard against that? A. Yes, we do.

Q. In making the application of the poisons, do you have to consider whether or not they would be dangerous to human life, health and property?

(Testimony of E. W. Bushing.)

A. Yes, we do. No one in the State of California can label [121] a product without it being first approved by the Bureau of Chemistry and, before they will approve it, these directions must be to their liking.

Q. Do you ever have any difficulty with the chemical department, or whatever department that is of the State of California which governs poisons in connection with getting any particular product that you want to use in your business?

A. Yes. Due to the extreme lethal qualities of sodium fluoro-acetate, their preference was that we handle the technical product by reducing—we knew and realized that there must be a dilution. And, after all, it must be broken down into minor dilutions to do the job that we wanted it to do.

To make sure we had a formulation that would be acceptable to them, we discussed and talked continually with them about a dilution of the formulation. This dilution of the formulation having been worked out, was accepted by them and we secured registration and, by the way, there are very few concerns in the State of California that have a registration for sodium fluoroacetate.

Mr. Rankin: If there is nothing from counsel, we will excuse you while you get that letter. Let me know, when you return.

Recross-Examination

By Mr. Bernard:

Q. You have testified about the application of these poisons. I believe you testified that, with one

(Testimony of E. W. Bushing.)

or two or three exceptions, [122] there are similar products on the market to those indicated by the Paramount label, although you claim that Paramount products are superior.

When you buy those other products on the public markets, of course, directions are given as to how they are to be applied, and so on?

A. Yes, directions are given..

Q. For instance, when you say there are many ant syrups—

A. Yes.

Q. If a man buys ant syrup on the market, of course, he gets directions as to how to apply it?

A. Yes.

Q. That is quite universal in these various concoctions for the control of rodents and insects, is it not?

A. It is more so in that specific instance you indicated than in rodent control. There is one large manufacturer of rodent grain outside of ourselves.

Q. In testifying about Exhibit 5-8, you mentioned a prominent oil concern. That is the Shell Oil Company?

A. Yes, it is.

Q. Do they still put out an insect spray?

A. They don't call it an insect spray.

Q. What do they call it?

A. 5-per cent DDT, I believe, the present name is. Yes.

Q. It is supposed to be an insect spray? [123]

A. No, the spray is given that name by a commercial company.

Mr. Bernard: That is all.

(Testimony of E. W. Bushing.)

Redirect Examination

By Mr. Rankin:

Q. Is there any one of these poisons here listed in these exhibits where the combination is not even known about? A. On these labels?

Q. Yes.

A. You mean the composition of them?

Q. Just held by Mr. Fisher and Mr. Sibert?

A. No, there isn't any.

Q. As far as you know? A. That is right.

Mr. Rankin: I think that is all. You may get that letter and then we will continue with the examination later on.

(Witness excused.) [124]

HAROLD W. HILTS

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rankin:

Q. State your name to the Court?

A. Harold W. Hilts.

Q. Where do you live?

A. I live at 4131 Randolph Avenue, Oakland, California.

Q. What is your business?

A. Extermination.

Q. With whom are you connected?

A. Paramount Pest Control Service.

(Testimony of Harold W. Hilts.)

Q. Have you any particular department in that service?

A. Yes, auditing department.

Q. Are you also familiar to some extent with the matter of pest control? A. Yes, sir.

Q. When did you first come with this company?

A. About May, 1940.

Q. Was it then a partnership?

A. Yes, sir, it was a partnership.

Q. Who were the partners?

A. Mr. T. C. Sibert and Mr. G. H. Fisher.

Q. Have you continuously remained with the pest control service [125] that they have conducted since that time? A. Yes, I have.

Q. When did you first meet Mr. Brewer.

A. Some time in February of 1946.

Q. Like Mr. Sibert, had you been a fast friend of his, or an intimate friend?

A. No, sir, I hadn't.

Q. Did you ever meet him or have any connection with him, particularly prior to the time he came with this service? A. No, sir.

Q. What did you do to assist Brewer in becoming established, if anything?

A. I brought Mr. Brewer to Portland in May or April, 1946, and assisted him in getting him familiar with the records and establishing his ways here so that he could carry on the business for the company.

Q. Had you had anything to do with him while he was in this short training period there, from February to April, 1946, at Oakland, California?

(Testimony of Harold W. Hilts.)

A. No, sir, only just to pass the time of day with him.

Q. Did you have any association with Mrs. Brewer? A. During that time?

Q. Yes. A. No, sir.

Q. After that time? [126] A. Yes, sir.

Q. In what capacity?

A. She was taking care of the books in the Portland office after that time.

Q. What can you say as to the system of the books as to whether it is required by the company or whether they are allowed to set up their own system?

A. The books are set up by the company, a specific system of accounting is set up. I travel throughout all our territory and I assisted her in getting established along that line after she came to Oregon.

Q. When you speak of all your territories, are they geographically bounded by natural state boundaries or are they split up so that there are two in some states?

A. They are split up into geographical boundaries in the states and also as to state boundaries.

Q. How many general agencies have you got of that nature?

A. Geographically bounded in a state?

Q. Yes. A. Well——

Q. How many agencies altogether, if you remember, Mr. Hilts? A. Eleven.

(Testimony of Harold W. Hilts.)

Q. How many of those can you say are bounded by state boundaries? A. Just two.

Q. Those two are what? [127]

A. Washington and Oregon.

Q. Were you familiar with the granting of the Oregon territory by Paramount Pest Control Service? A. I was.

Q. To whom was it made?

A. To Mr. Brewer.

Q. Were you familiar with the signing of the franchise agreement, Exhibit 24, in this case as of July 1, 1946, between Paramount Pest Control Service and Mr. Brewer? A. Yes, I was.

Q. After the execution of that franchise, to your knowledge did the parties continue performance under that agreement? A. Yes, sir.

Q. When did you become aware that there was any change or difference in any phase of that, Mr. Hilts?

A. In December, 1946.

Q. How did you become aware of that?

A. Mr. Sibert told me.

Q. What was the change?

A. The change as was illustrated at that time I did not understand completely.

Q. It related to what phase of it?

A. Change of payment.

Q. Was there any other phase or provision of that contract that was changed? [128]

A. No, sir.

(Testimony of Harold W. Hilts.)

Q. What did you do with respect to accounting statements under this contract between July 1, 1946, and December 31, 1946?

A. Did you say under the change?

Q. No, under the contract itself?

A. I was here first in October, the 13th, the first time that I was here under the agreement that had been entered into on July 1, 1946, and I had submitted at that time, after going through the records and closing the books, a trial balance, a profit and loss statement and balance sheet, on the business entered on the records at that time.

Q. On what basis did you submit that statement?

A. The books are kept on a cash basis and the franchise, as it was called, the 20-80 agreement, was based on 20 per cent of the gross receipts.

Q. Paid to whom?

A. Paid to the Paramount Pest Control Service in Oakland.

Q. And the 80 per cent—

A. —was left for Mr. Brewer to operate on and to take home for himself.

Q. At the time you submitted the October statement, on what basis did you submit it? On the franchise basis or the 80-20? A. Yes.

Q. Did you receive any resistance from Mr. Brewer in that regard? [129] A. I did not.

Q. Up to the time you learned of the different arrangement from Mr. Sibert, had you rendered other statements on the 80-20 per cent basis?

A. Yes, sir.

(Testimony of Harold W. Hilts.)

Q. Had you received any resistance from Mr. Brewer? A. No, sir.

Q. The dollar-for-dollar arrangement, as it has been termed, expired when?

A. December 31st, 1946.

Q. When it came to the January and February statements, 1947, on what basis did you submit those?

A. I submitted those on the 20-80 per cent agreement that was in effect as of July 1, 1946.

Q. Was that termed the franchise agreement?

A. That was termed the franchise agreement.

Q. When did you submit those?

A. I took the figures off the books March 13th and had them in rough draft and had talked with Mr. Brewer relative to the business in general and showed him the figures, and then I took those figures back to Oakland with me and also a check accompanying the total settlement for those two months of January and February to Oakland.

At that time, in Oakland, I prepared or had prepared typewritten copies of my rough draft and mailed them back to [130] Mr. Brewer.

Q. Did you, during the month of January, 1947, have any conference or talk with Mr. Brewer?

A. Yes, sir.

Q. When was that?

A. Around January 20th.

Q. Where was that?

A. That was in Portland, Oregon, in our office in Portland, Oregon, the Portland office.

(Testimony of Harold W. Hilts.)

Q. What was the purport of that conversation?

A. As I remember it, we discussed the various operations of the business and made comments as to how it was progressing, and the books were, of course, closed for December 31st, and I took the figures that I had to have to send back at that time, and any additional information, and then we discussed the business as to how it was progressing, and then we probably brought up—As I recall, he mentioned something to me about having had an understanding relative to an adjustment as to the change of payment under the franchise.

Q. Had you understood it then, at that time?

A. I didn't.

Q. What did you do then?

A. I told him I didn't understand exactly what it was and that it was not clear to me.

Q. What did you do then? [131]

A. I left after that time and went back to Oakland.

Q. What did you do at Oakland?

A. Went through my regular course of duties.

Q. What did you do with respect to the understanding at the time?

A. I couldn't do anything about it because the understanding that he had was with Mr. Sibert and Mr. Sibert was not available at that time and, so, I couldn't contact him.

Q. Did you discuss it with Mr. Sibert when he was available?

A. Not until March 15th of 1947.

(Testimony of Harold W. Hilts.)

Q. Was there anything else in this discussion of January 20th concerning Eastern Oregon?

A. January 20, 1947?

Q. 1947, yes. Mr. Sibert testified about that. I don't know whether it had been brought up with you or not? A. No, it had not been.

Q. Then did you have any contact with Mr. Brewer during the month of February, 1947?

A. I was not in Portland and I had not seen Mr. Brewer during February, 1947.

Q. From your position as auditor in the Paramount Pest Control Service, do you know whether or not Mr. Brewer made any payments on his franchise—and when I say “franchise,” I am referring to the July 1, 1946, agreement—on the amount that he owed Paramount Pest Control Service? [132]

A. Yes, sir, he did. He made payment February 6 of 1947 in the amount of \$250.

Q. Did you enter that payment in your account?

A. Yes, they were reported on his records.

Q. Will you see if you can locate that in the file, the check which you describe as the February 6th payment? A. Yes, I have it here.

Q. What is the exhibit number? A. 30.

Q. Is there anything on that check that discloses the breakdown, what the payment was made for?

A. Yes. In our system of accounting, we have what we call the voucher system. The original copy goes to whomever it is made in favor of and the duplicate is retained in the office, and the duplicate

(Testimony of Harold W. Hilts.)

is an exact copy of the original, because a carbon is necessary to put it on there.

Mr. Rankin: May I ask you to hand that to the Court?

The Court: I don't want to see it just now.

Q. (By Mr. Rankin): One copy you have?

A. Yes.

Q. Do the original and copy both disclose the items of the February payment, as made?

A. The original must have disclosed it, but the original has a division, which is known as the check proper and the remittance advice part. The remittance advice is torn off when the party [133] in whose favor the check or voucher is made payable deposits it, and the only part that we have left here in evidence is the check part and the duplicate voucher part shows what was on the remittance advice that has been torn off. It discloses "For franchise, \$250.00."

Q. What is the total of the check?

A. \$338.00.

Q. What is the balance, the difference between the \$338.00 and the \$250.00?

A. In this particular case it is \$88.00.

Q. What is it for, generally speaking?

A. Well, it is for supplies for December, \$28.87, auditing for December, \$25.00, and billing statements, \$34.13.

Q. Did you make a request of Mr. Brewer for this payment? A. I did not.

(Testimony of Harold W. Hilts.)

Q. Did you make any designation as to what it should apply on?

A. No, sir. He put that on there of his own free will.

Q. When it comes to the designation "For franchise, \$250.00," did you have anything to do with requiring that designation?

A. I never did, no.

Q. When was the next payment made by Mr. Brewer?

A. March 6, 1947. It is in the amount of \$250.00 and states "Apply on 1946 franchise."

Q. Was there any other item contained in that check except the franchise payment? [134]

A. No, sir.

Q. What you described as to the method of payment, as to the original and duplicate, particularly with reference to the voucher, applies to this check as well as the other? A. Yes, it does.

Q. Were there any payments made by Mr. Brewer on the January and February, 1947, franchise account?

A. Yes, there was. There was a payment made to me on March 13th when I was in Portland, going through the records, making up the statements for January and February. That payment was in the amount of \$494.25 which completed the total amount of his liability to us under the franchise contract for January and February.

(Testimony of Harold W. Hilts.)

Q. It is claimed, as you well know, by Mr. Brewer that these payments were all on account of the franchise, as modified, meaning the change of payment on the dollar-home and dollar-company.

Was there anything in connection with those payments which could have been reconciled with that dollar-for-dollar agreement? A. No, sir.

Q. Is there anything in these payments that is reconcilable with the franchise provision of 80-20 distribution?

A. Yes, there is. The duplicate part of the voucher here reads, "Franchise balance for January and February," and then [135] it records the January and February franchise, \$994.25, and "Paid, \$500.00; balance, \$494.25," and that was the exact amount of his remittance to me.

Q. On what basis?

A. On the basis of the 20-80 per cent franchise contract for January and February.

Q. Were any of those payments made by Mr. Brewer under any complaint or protest to you?

A. Absolutely none whatsoever.

Q. When did you complete your review of the books, your investigation?

A. You say when did I what?

Q. When did you complete it?

A. March 13, 1947.

Q. The first two of these checks are in round figures, are they not? A. Yes.

(Testimony of Harold W. Hilts.)

Q. If I recall correctly?

A. Yes, they are. One was \$338.00 even and the other was \$250.00 even.

Q. With respect to the franchise payments, what were they?

A. \$250.00 was included "For franchise," but the next and second one was just for \$250.00.

Q. That left an odd amount for the third check?

A. That is correct. [136]

Q. How much was that odd payment to complete the total payment under the franchise for January and February, 1947? A. \$494.25.

Q. You probably said, but I don't recall: When did you complete that examination?

A. Of January and February?

Q. Yes, January and February.

A. March 13th.

Q. Then what did you do?

A. I went back to Oakland. Mr. Brewer took me to the airport, and we had our usual—well, conversation that, "Oh, well, things are going along fine" and everybody was happy, and so on. He often drove me out to the airport and watched planes take off the ground. I remember that specifically.

Q. Was there any complaint made by Mr. Brewer that you were not treating him correctly?

A. No, sir, not at all.

Q. Was there any protest or objection on his part as to making the payments that he had previously made or had made at that time?

A. No, sir. His attitude was to the effect that he knew it was due and he was going to pay.

(Testimony of Harold W. Hilts.)

Q. Did he at that time indicate that he was under the belief that the dollar-home and dollar-company agreement of September 12th was still continuing? [137]

A. No, sir, he didn't.

Q. When you arrived at these figures showing a total of \$994.25 due under the franchise agreement for January and February, 1947, did you go over that matter with Mr. Brewer? A. I did.

Q. When did you get the figures that you went over with him?

A. The figures were on his books. I took them off the records of the office for January and February. They represented the figures that are used in figuring the terms of the contract, commonly known as the franchise.

Q. Did he understand it as you went over it?

A. He certainly did.

Q. Who made the entries in the books from which you took them, if you know?

A. Mr. and Mrs. Brewer, mostly Mrs. Brewer.

Q. Then, upon your return to Oakland, what did you do, upon your return to Oakland in March of 1947?

A. I went through my regular procedure, having made a rough draft, and prepared it to be mailed.

Q. A rough draft of what?

A. Of my examination of his records for January and February, 1947, and then at that time I asked Mr. Sibert if he would clarify for me his agreement relative to his understanding with Mr.

(Testimony of Harold W. Hilts.)

Brewer for the period starting July 1st, 1946, to December 31st, 1946. [138]

Q. Did Mr. Sibert do so?

A. Yes, Mr. Sibert did so.

Q. You say you went through your regular procedure of preparing your accounting. Did you mail to Brewer a copy of your accounting for January and February, 1947? A. Yes, sir, I did.

Q. Can you state whether or not there is in this file such an accounting, this file of exhibits?

A. Yes, there is.

Q. What is that exhibit?

A. It is not in this exhibit file. Pardon me. Yes, it is. I think I recognize it here. No, I don't. It is not here.

Q. I hand you this second volume and ask you if you can locate it in there?

A. Yes, sir, I do.

Q. What is the number?

A. It is No. 57.

Q. Did you give Mr. Brewer credit in that accounting for the payment he had made by the check dated February 6, 1947, for \$250.00?

A. Credit was given to him on his books, and his book figures are recorded on here, yes.

Q. Did you make an accounting for February, 1947, also? A. Yes, sir.

Q. Did you deliver both of these when the January and February [139] accounting was done?

A. I was not here in February or January.

(Testimony of Harold W. Hilts.)

Q. Did you give him credit for the February payment of \$250.00 on the franchise in your February statement?

A. That was not recorded on the books because— Did you say in February?

Q. Yes.

A. I am afraid I don't understand that question. Yes, the \$250.00 payment that was made February 6th is recorded and he is given credit for that on his statement.

Q. Then, the balance of \$494.25, was he also given credit for that?

A. Yes, sir, he was. It is also a matter of record in his books.

Q. Were those entered on his records as well as your own? A. Yes.

Q. As relating to the amount of money due from Brewer to Paramount under the franchise of July 1, 1946? A. Yes, sir.

Q. Did you do anything else in relation to payments when you returned to Oakland in March, 1947? A. Yes, sir, I did.

Q. What did you do?

A. After understanding the agreement with Mr. Sibert, the agreement that Mr. Sibert and Mr. Brewer had entered into, which was [140] up to and including December 31, 1946, I then took the figures that we had for effecting an accounting on a settlement and prepared—Mr. Sibert and I prepared the figures together so that it would be right,

(Testimony of Harold W. Hilts.)

which was based on the "You take a dollar and I take a dollar" basis, and then mailed it to Mr. Brewer in Portland.

Q. Was there a letter of transmittal with that?

A. Yes, I wrote a letter along with that?

Q. What is the date of that letter?

A. March 15, 1947.

Q. What is the exhibit number so we will have it identified?

A. I don't have it here.

The Court: Take a short recess.

(Recess.)

Q. (By Mr. Rankin): Before the recess we were talking about Exhibit 29, which was your letter of March 15, 1947, to Brewer at Portland. "Enclosed is a statement of your account for 1946, also January and February of this year."

So as to expedite it, do you have the statement of your account for 1946 that was enclosed here?

A. No, sir, I don't.

Mr. Rankin: For the Court's information, at the previous hearing of this case in the Circuit Court Mr. Leo Smith gave that letter to Mr. Bernard and Mr. Bernard says he gave it back.

The Court: I have heard about that. [141]

Mr. Rankin: And we do not know where that is now.

The Court: Very well.

Mr. Rankin: Is that statement of January and February, 1947, in this list of exhibits?

A. Yes, sir.

(Testimony of Harold W. Hilts.)

Q. What is the number that appears?

Mr. Bernard: Did I understand Mr. Rankin to say that at the hearing in the Circuit Court he gave this statement of account for 1946 or this letter?

Mr. Rankin: No, the statement of the account and the letter. They are both together.

Mr. Bernard: No, just the letter.

Mr. Rankin: I wasn't there, then. I don't know anything about that. Mr. Bernard and Mr. Smith will have to finish that.

The Court: Don't argue about that.

Q. (By Mr. Rankin): Do you find that letter? That statement, rather? A. Yes.

Q. What is the exhibit number?

A. Exhibit 57.

Q. This letter (Exhibit 29) says: "You will note that this splits everything across the board for 1946 and we both come out with \$1,479.65 and you still have your \$1,000 investment in the business."

What did that indicate that the total revenue for 1946 was?

A. Well, the total amount that was split was \$1,479.65.

Q. The third paragraph says: "For January and February there is a net profit of \$1,016.55 with the franchise out of it, now you have drawn \$512.22 for both months"—

What franchise did you refer to when you said "the franchise out of it"?

A. I referred to the franchise that was in effect as of January 1, 1947, and the franchise that I re-

(Testimony of Harold W. Hilts.)

ferred to in this letter was based on the 20-80 per cent basis, which was for January and February of 1947.

Q. Then you say "now you have drawn \$512.22 for both months; if we take \$512.22 like you did that will be your franchise for January and February." What did you mean then by "franchise"?

A. I meant there that in the discussion that I had with Mr. Sibert down in Oakland March 15th, at the time this letter was written, that there was a thought brought to my mind by the Eastern Oregon venture was not as profitable as we had considered that it would be, and, on the basis that it was not profitable, I had suggested to Mr. Sibert that we, in trying to help Mr. Brewer, show him that we were in favor of trying to keep the man going and so he could make a supreme success of the area, without financial responsibility on his shoulders, that we would be willing to take for January and February the same amount that he took up to December 31st, 1946, and incorporated [143] that in this letter.

Q. Did Mr. Brewer make that request of you?

A. He did not.

Q. Was there any suggestion by Mr. Brewer to that effect in consultations or conferences you had with him in March or at any other time?

A. No, sir.

Q. Was it agreed to and this notice sent before Mr. Brewer was aware that it was to be done?

(Testimony of Harold W. Hilts.)

A. Please state the question again. I didn't get it.

Q. Was this agreement of yourself and Mr. Sibert to divide this January and February, 1947, return on the basis of the dollar-home dollar-company done before Mr. Brewer knew anything about it? A. Yes, sir.

Q. "Now you have paid \$994.25 as franchise for January and February which is \$482.03 over your January and February franchise." What did you mean by that, "over your January and February franchise"?

A. I meant that it was over the payment on the basis of the 20-80 per cent of the \$994.25 which was in effect for January and February and, therefore, according to the terms of the agreement that he had with Mr. Sibert.

Q. Your letter continues: "* * * as per above figures, this will be credited to the \$1,479.65, which leaves \$997.62 which [144] will wipe off 1946."

How much had he made in 1946?

A. How much? I don't understand that question.

Q. What had he made in 1946, do you know? In other words, what did this \$1,479.65 refer to?

A. That refers to the dollar-for-dollar agreement; in other words, \$1,479.65 was his portion, and we would get \$1,479.65 for 1946, from July 1st to December 31st.

Q. How was it paid?

A. It was never paid.

(Testimony of Harold W. Hilts.)

Q. Was it paid by this?

A. No, sir, that didn't apply in 1946. The payments that he made applied on January and February.

Q. Maybe it is my fault that I do not understand this, Mr. Hilts, but it says here, "This will be credited to the \$1,479.65." Where do you get the \$1,479.65?

A. That was the statement that was attached to the letter.

Q. Was that due from Brewer to Paramount?

A. That is correct.

Q. What for? What was the basis of that obligation?

A. On the change of payment basis he had with Sibert, and it was due for the period July 1st to December 31st, 1946.

Q. That is what I understood. I didn't know that you gave that. It is the contention by Mr. Brewer that this business was in a very poor condition and that he put it in a good condition, [145] this agency here, and he said something to the effect that when he took over this business it was in the red. Is that true?

A. No, sir.

Q. Do you know what the amount of earnings of this Oregon branch were prior to, at the time of, and immediately subsequent to Mr. Brewer's taking over in Oregon?

A. I will have to go back to 1945 to bring that out and show you the comparison.

(Testimony of Harold W. Hilts.)

During 1945 we never lost money up here in Oregon, which was—We never lost money up here in Oregon with the exception of one month, which was the month of December.

Q. What year?

A. 1945. At that time the loss was only about \$22.00. I don't remember the exact figure.

In January and February and March of 1946 we also made money, and we have had a statement prepared on that basis. I believe I turned those over to you.

In April and May after Mr. Brewer came to this area, the records show that we absolutely lost money. Then, again in June, it started to pick up again.

Q. Up to the time Mr. Brewer took control, was there any loss? A. No, sir.

Q. Immediately afterwards, for how many months was there a loss? [146]

A. For a—For two months after that.

Q. Then, after that, did Mr. Brewer start to make money?

A. Then he had started to show a little gain.

Q. Up to December, then, 1946, December 31, 1946, when this amount that you describe in your letter was due? A. That is correct.

Q. You go on and say, "Ted tried to explain this to me just before I came up this last time, but I didn't get it." That has reference to what?

A. That was in reference to the agreement that he had had with Mr. Brewer September 12, 1946.

(Testimony of Harold W. Hilts.)

Q. "Regarding Brooks and Ahern—" Who were they?

A. Mr. Brooks and Mr. Ahern were servicemen and salesmen that were involved in the Eastern Oregon extension campaign.

Q. " * * * We will split this the same." What did you mean by that?

A. The understanding there was that we would take the expenses and split them in half and we would take any income derived from this venture and split that in half, and we would both bear half of the burden; the company would bear its half and Mr. Brewer would bear his half; and, if there was a profit, that would be split; if there was a loss, that would be split.

Q. What actually happened under that agreement? A. It was a loss.

Q. What was done? Were there any moneys received at all from [147] the business?

A. There were, and the income came into the Portland office and we paid the expenses. To begin with, it was one of those deals where we got the bad end of the deal until we had a settlement.

Q. What became of the money that was paid in?

A. Mr. Brewer got it.

Q. Have you been paid any of that?

A. No, sir.

Q. What became of the expenses that you incurred? A. We paid them.

Q. Did Mr. Brewer compensate you?

A. No, sir.

(Testimony of Harold W. Hilts.)

Q. When, after March 15, did you again come in contact with Mr. Brewer in relation to this business between Paramount and Brewer?

A. In April.

Q. What time?

A. Oh, the first part of the month. I don't remember the exact date.

Q. What was the subject of that discussion?

A. It was carried on on the same basis as we have always operated. I had asked if he had received his letter of settlement and I think he said yes; he seemed to be satisfied with it, and I went ahead and prepared my examination of his records, closed them, prepared my profit and loss and balance statements and took them back to Oakland and sent them back to him.

At that time he also saw me off at the airport. He transported me back and forth from the airport and our relationship was of the best.

Q. When did you next see Mr. Brewer?

A. In May, 1947.

Q. At what time?

A. Around the 14th or 15th.

Q. What was the occasion? What was discussed in relation to this business then, if anything?

A. Just the same procedure. We went right along on the same basis.

Q. When did you next see Mr. Brewer?

A. In June, June 17th of 1947.

Q. Where?

(Testimony of Harold W. Hilts.)

A. I saw him here in Portland, and at that time Mr. Sibert accompanied me on the trip. We both were together with Mr. Brewer in the office here and went over the affairs of the business.

Q. When did you next see Mr. Brewer?

A. July 9, 1947.

Q. What was the occasion?

A. At that time I went ahead with my regular procedure and also prepared a settlement. We had an understanding, Mr. Sibert, Mr. Brewer and myself, back in June of 1947; we had an understanding [149] where he would request that we allow our settlement of the accounting on the franchise to run for the fiscal year which would be from July 1 of 1946 to June 30 of 1947, and we mutually agreed to that.

Back in June we also set forth a budget for the business, as the way the figures were on the books, stating absolutely the expenses that were involved and the income. Mr. Brewer had \$3,000 business, monthly business, on the books.

Q. I will come back to that in a moment. When did you next have any conference with Mr. Brewer?

A. July 9, 1947.

Q. After July 9th?

A. The next time I saw Mr. Brewer was July 31, 1947.

Q. That was after the termination or about the termination?

A. That was after we had received the letter in reference to terminating his agreement with us.

(Testimony of Harold W. Hilts.)

Q. From July 1, 1946, to and including the conference and meeting of July 9, 1947, had Mr. Brewer expressed to you any intention of terminating this relationship between the Paramount and himself, disclosed by this agent's agreement?

A. No, sir, none whatsoever. As a matter of fact, our relationship was pretty much on an even keel all the time. There was never any mention made relative to dissatisfaction. In fact, I had made different recommendations to Mr. Brewer, as I do when I am in the territory, because of my knowledge of the business, [150] because I am also a licensed operator and I understand the outside operations as well as I do the accounting.

Q. Did Mr. Brewer indicate that he wanted to terminate this relationship at any time?

A. He certainly did not.

Q. Did he indicate to you that there was a desire on his part to get a different adjustment that he was insisting on with respect to pay, other than what you had granted?

A. No, sir.

Q. Have you, Mr. Hilts, stated fully the description of the relationship that existed between Paramount Pest Control Service and Mr. Brewer during that whole year? Is there anything you can add to what you have said about your relations?

A. Why, I believe that while I was talking about the June 17th trip there was an item that I had not related, which was to the effect that Mr. Brewer had said he had contacted the bank that he was doing business with here and he wished to be

(Testimony of Harold W. Hilts.)

able to let them know how he was getting along in his business, and he requested that we prepare a statement as to the operations. As he put it, the bank said that they wanted to know just exactly what the situation was as to his personal and business affairs, which is according to banking procedure, and at that time we prepared a rough draft and went down to the bank, Mr. Sibert, myself and Mr. Brewer, and with the express purpose of trying to get him acquainted with the bank and his position with the [151] bank—the banker happened to be Mr. Ridehalgh, of the California bank, I believe it was, or the Bank of California, I don't know which it is,—and he at that time listed all the operations of Mr. Brewer and the Paramount Pest Control Service.

Q. Did Mr. Brewer then tell the banker in your presence, or did he tell anyone, that he was dissatisfied with the treatment he was getting here, that the treatment he was getting was not proper or that the compensation he was receiving was not adequate?

A. No, sir, not at all. May I go on to say that at the time of the June 17th conference which you asked me about—

Q. I was just coming to that now. Will you please refer to that particular occasion and tell what transpired and what was said between the representatives of Paramount, Mr. Sibert and yourself and Mr. Brewer?

A. During that time, after I was completed with the records, closing the business up to and

(Testimony of Harold W. Hilts.)

including May 31st, 1947, we sat down and made a budget from the figures in his records, and that budget proved, being based on the amount of business that he had, that he had over \$3,000 worth of monthly business, that he could keep his franchise and pay all his bills and keep his territory in operation and come out with \$855 a month, in round figures and Mr. Brewer's own words at that time was to the effect, "Well, that being the case, I can't afford not to be on the 20-80 per cent franchise basis because I will make more money that way than I would the other way." Whereas, we would [152] only be getting \$600 out of it, he would be getting \$850, and that is not uncommon in our business.

The Court: What is not uncommon?

A. It is not uncommon in our business for a territory agent to receive more compensation on the franchise basis than they would receive on the 20 per cent.

The Court: Do they usually get about that, right around \$10,000 a year?

A. We have had operators earn more than that, sir.

The Court: What is your gross business, about?

A. You refer to all our operations?

The Court: That is right.

A. Well, it runs upwards of probably \$700,000.

The Court: A year?

A. Yes, sir.

(Testimony of Harold W. Hilts.)

The Court: Increased pretty rapidly, has it?

A. Well, it has a pretty steady growth now. It increased rapidly during the war, as most businesses did, but we still have not dropped down. We are increasing.

The Court: A very profitable business?

A. A very profitable business, if it is run right, yes.

The Court: Highly profitable, at that rate?

A. That is correct.

Q. (By Mr. Rankin): Your franchise calls for an 80-20 distribution, [153] respectively, between agent and company? A. Yes, sir.

Q. What do you estimate, in general, it costs to process or serve these contracts, with the expenses paid by the agent?

A. 60 per cent, average. In other words, that is the basis on which the franchises are drawn.

Q. So, that leaves 20 per cent for the agent and 20 per cent for the company?

A. That is correct, sir.

Q. 20 for the company is fixed, is it not?

A. Yes, sir.

Q. And is the 20 per cent for the agent fixed, or can he vary that 20 per cent by his method of operating the territory?

A. He can definitely vary that by his method of operating.

Q. What are some of the figures that are less? How much less than 60 per cent does an agent use in operating his territory?

(Testimony of Harold W. Hilts.)

A. Do you mean how much more than 60 per cent?

Q. How much more and how much less? If he operates at less than 60 per cent, he gets that difference, doesn't he? A. That is right.

Q. How far down below 60 per cent do agents go? A. It can go as low as 45 per cent.

Q. Sometimes if an agent is not a particularly good operator, how much more than 60 per cent does it cost him?

A. It can run as high as 75 per cent operation.

Q. Going back to the June 17, 1947, conference, was there anything else that was said at that time between Mr. Brewer and you and Mr. Sibert, that you have not related?

A. Yes, there was. Mrs. Brewer was in San Francisco or Sunny Hills, California, and, when we found that out, Mr. Sibert and Mr. Brewer and myself—While Mr. Brewer was taking us to the airport, why, Mr. Sibert got the idea probably he would like to go down and see his wife.

Q. Is that the same transaction or occurrence Mr. Sibert testified about this morning?

A. Yes, sir.

Mr. Rankin: Well, we won't repeat it.

The Court: Whom do you blame for all this trouble, Mrs. Brewer? Is that what you were leading up a minute ago?

A. I didn't make any contention about it, no, sir.

(Testimony of Harold W. Hilts.)

The Court: Did you hear some remarks she made down there?

A. No, sir. You mean that is why I started to relate that?

The Court: Yes.

A. No, sir.

Q. (By Mr. Rankin): Do you have anything to say about the collections here that has not been said?

A. Well, I noticed that the balances that were due Mr. Brewer that the customers owed him kept crawling up each month; in other words, they were not collected, and I would keep referring to it, and at the end of June there was a balance of over [155] \$3500—\$3600—on the books.

A. As I recall, the contract, which is here and which speaks for itself, makes him responsible for those collections?

A. That is correct.

Q. That is, they were to be made by Mr. Brewer?

A. Yes, sir.

Q. Did he make those collections you are talking about?

A. He eventually collected all he could get out of the business; in fact, he collected everything, and then drew it out of the bank.

Q. Just describe what you mean by that. What was his process?

A. Well, he knew that he had to clear his accounts receivable by the medium of showing payment by the collection that he made on those accounts receivable. Therefore, he could not just

(Testimony of Harold W. Hilts.)

collect the money and stick it in his own pocket, figuring that it was his. He had to run it through the books, so he would run it through the books. Then he would turn around and draw a voucher or check and put it in his own personal account or do whatever he wanted to with it.

Q. Let us turn to some of these items that we are claiming here, Mr. Hilts.

The Court: Are you going into the question of damages?

Mr. Rankin: Yes.

The Court: Put that off for awhile. Let us try the other feature. Let us try the equity feature of this case. [156]

Mr. Rankin: All right, your Honor.

Q. Did you cover everything now that occurred in the June 17, 1947, meeting or conference?

A. Yes, sir, except that you stopped me when I was relating the conversation.

Q. That is the same thing Mr. Sibert testified to?

A. Yes.

Q. So there is no need to repeat it. Now, then, you spoke of an accounting in July, July 9, 1947.

A. Yes.

Q. How did you prepare that accounting?

A. Well, that was prepared on the basis of "You take a dollar, we take a dollar."

Q. And why was that done?

A. Because Mr. Brewer had requested that we run it up to the fiscal year, as I mentioned in my

(Testimony of Harold W. Hilts.)

previous testimony, and asked that we wait until the end of June, June 30th, to make settlement.

Q. Did you agree to do that? A. We did.

Q. At his request? A. Yes, sir.

Q. State for what period that compromise or adjustment covered?

A. Covered from July 1, 1946, to June 30, 1947.

Q. Did you prepare a statement for Brewer in connection with the accounting on that basis for that year? [157]

A. Yes, sir, I did.

Q. Is there a copy of it in evidence?

A. Yes, there is.

Q. What exhibit number is it?

A. Exhibit No. 36.

Q. Did you show these figures to Mr. Brewer?

A. Mr. Brewer helped me compile them. As a matter of fact, we spent over two hours on it together.

Q. Where did you and Mr. Brewer get the figures from?

A. Most of them were taken from his records. Some of them were in invoice form that were not entered on his records.

Q. Then what was said by you and Mr. Brewer with respect to this accounting of July 9th?

A. Prior to the time we started to effect this accounting, Mr. Brewer had a notion that we were going to make an accounting as of June 30, 1947, and I told him after I had prepared my examination of his books up to June 30, 1947, we were going to sit down and effect a settlement, taking in the

(Testimony of Harold W. Hilts.)

fiscal year's operations, and I told him that we were going to settle it, and he agreed that we should settle it if I had to stay a week to do it. Thereafter, we sat down and started to work on the figures.

Q. What did you do? Just go ahead and state what was done in the compilation of this accounting, please?

A. To get our dollar-for-dollar agreement, we took the accounts [158] receivable that he could collect, money that he could get; we took the asset investment that had not been charged into the records as expenses; took the cash on hand in the bank which was recorded against the expenses of operation, that is, left after the operation, and then we also recorded the amount of money that Mr. Brewer himself had drawn for that period of time, and added those figures.

Then we had some bills that were on hand that had not been paid as of June 30th, because the books were operated on a cash basis, and they were not set up in accounts payable and, therefore, they were due. We subtracted that figure.

Then we took half of the expenses of the Eastern Oregon run and subtracted that figure.

Then we took the bills that Mr. Brewer had owed Oakland, which were accrued and some of which were even involved in the settlement or accounting on the settlement as of December 31st, and we subtracted that figure.

Then the total was split in half. That would give us the exact figure, the real amount that there was

(Testimony of Harold W. Hilts.)

left, including Mr. Brewer's drawings and everything in the business.

Then we took one-half of the Eastern Oregon run that had not been paid us that year, and we added that, which was due us.

Then we subtracted half of the amount paid a man by the name of Torrach, wages for the period for which he was hired, [159] and gave him credit for that.

Then the statement goes on to show one-half of the amount of the franchise that was paid, based on January and February of 1947, and we gave him credit for that, and then we show the overdue bills that was owing to Oakland, and we added that.

That was the figure I referred to as part of it being in 1946, because we had that money coming. We had never been paid that money, and it was justly ours.

Then there was a piece of equipment known as "Hi Fog" that had not been paid for, which would become an asset on his records, and he owed us for it, and we charged that to him.

We took the total figure and Mr. Brewer agreed upon it, so much so that he gave me a check in payment of part of this settlement.

Q. What was the total that he owed, according to your joint understanding? A. \$3,359.61.

Q. What amount did he pay?

A. He paid \$259.61, leaving \$3,100, in round figures.

(Testimony of Harold W. Hilts.)

Q. Was there any discussion of the payment?

A. There was not, and we went on, after we had agreed upon it, and I asked him how he wanted to pay it off, and he said, "Well, I will see how the money comes in. As the money comes in, I will be glad to, naturally, pay it off, as long as it doesn't hurt [160] the business," and we accepted it that way and agreed upon it.

Q. Why didn't he pay the total amount, \$3,359.61?

A. He didn't have that much, although there was that much and more represented in his books and assets and inventories. He didn't have that much cash on hand.

Q. Was there anything said why he should pay that odd amount?

A. No. That was his way of wanting to do it, and I accepted it that way. In that I was in every way trying to make him feel that there was no pressure being brought to bear on him at all. That was his own figure, his own idea, and I accepted it.

Q. Was there any indication on July 9th, when you had this conference with him, that he was going to cancel his contract thirteen days later?

A. No, sir, none whatsoever. When we received his letter in our Oakland office, it was like a bomb-shell in our camp.

Q. What did you do after you received that letter? By the way, going back to that statement, which exhibit is that? A. 36.

(Testimony of Harold W. Hilts.)

Q. Did he make any endorsement on it?

A. Yes, he did. He set forth the check number and the amount that he paid on it, making a record of that, so he could keep track of it.

Q. Is that endorsement in his own handwriting?

A. That is in his own handwriting. [161]

Q. What does it say?

A. It says "July 9, 1947, paid, Check Number 413, \$259.61."

Q. When did you next come in contact with Mr. Brewer? When did you next come in contact with Mr. Brewer after the receipt of his letter of July 24, 1947?

A. The next time I saw Mr. Brewer was July 31st, 1947.

Q. Whereabouts was that?

A. In Portland, Oregon. I was registered in the Roosevelt Hotel at the time, and Mr. Brewer came up to the hotel. He knew, of course, that I was in town, and when he came into the hotel room my first words to him were, "Well, Charlie, what in the world happened?" And he says, "Well, I don't know; just couldn't seem to make it go," and so he said—

I said, "Well," I said, "what are you going to do?" And he said, "Well, she is all yours, if you want it." He said, "Tomorrow you come down and we will take an inventory and I will give you these supplies," and we had a general conversation along that line, and so I asked him where I could get in

(Testimony of Harold W. Hilts.)

touch with Mr. Rightmire and he said, "I don't know exactly where he lives," and I said, "Well, can't you give me his address? Isn't it in the office?"

"Yes," he said, "I will get it for you. I will get it at the office on my way home. I will get it for you and call you up and give it to you on the telephone." [162]

I said, "I would like to see him tonight, if I could," and he said, "I don't know. I don't think it will do you much good to see Mr. Rightmire. Rightmire isn't going to stay in the exterminating business any more. Rightmire is sick."

I said, "Well, if, as you say, he is sick, I would like to go, as a company representative, and see him and tell him we are sorry about his sickness, and be interested in general because he is an employee of ours."

He said, "Well, I owe Mr. Rightmire a vacation." And he said, "He is through. He isn't going to work any more."

So I said, "Then, if you will give me his address, I will appreciate it," and he said, "I will stop at the office."

I waited for over an hour, which was more than ample time for him to arrive at the office and obtain the address, and I didn't hear from him, so I made a call to his home and asked him what had happened.

He said, "Well, I couldn't find the address," so I said to him, "Well, I understand you were going to at least let me know," and he said, "Well, I was going to call you up while I was eating dinner," so

(Testimony of Harold W. Hilts.)

I said, "Well, that is fine," and hung up. There was no more conversation at that time.

I found out later that his address was in the records and that it was in a little slide telephone file that was in the office, and so I obtained it myself and saw Rightmire the next day. [163]

Q. What was your conversation with Mr. Rightmire?

A. I went out to his house, and we sat out front talking, and he told me that he thought Mr. Sibert was one of the dirtiest guys he had ever talked to or seen and that he wouldn't have any part of it, and that he never realized what a dirty louse he was, and, of course, that made my blood boil, because I had been associated with Mr. Sibert for some time, twelve or fourteen years; had known him prior to my association with the business. He went on with that conversation. He said he would not work in the extermination business for anybody. He said, "I am through."

I said, "What are you going to do?" And he said, "I don't know what I am going to do." He said that.

"Well," I said, "you are really not interested at all?" And he said, "No, I'm sick. I am not going to work at all. I have had to take treatments from my doctor and I am, in general, run down. I have been working too hard for Brewer, and I am run down. I don't know what I will do. Maybe I will get something, as I have had some previous selling experience."

(Testimony of Harold W. Hilts.)

We continued the conversation in general, and then he reiterated that he would not have any part of Paramount or any of its organization at all; he was entirely through and said that there was no reason in the world for him to work for an outfit that would do things like Brewer or Paramount, or like Paramount, had done, and so then I said, "Well, you are not [164] going into business at all? Then I can't offer you the proposition that I had in mind when I came out here," and he said, "No, I am not interested at all."

Q. When did you know he was working for Brewer?

A. We found that out, well, the third or fourth day of August, on contacting our accounts, through men that we had to bring into this area to protect our business, because we operated on a monthly service basis, and there is so much business that has to be done and so many men have to do it, and, as we understood one fellow, we did not have any organization and our customers knew we did not have any organization; in fact, we were supposed to have been liquidating, which was news to us.

While we were contacting our customers, our men would run into these service slips of Brewer's and, in some instances, Mr. Rightmire's name appeared, indicating that he had serviced them.

Q. Did you ever discuss the matter with Mr. Rightmire again?

A. I never did. I have never seen him since.

(Testimony of Harold W. Hilts.)

Q. In respect to Mr. Duncan, did you have any conversation with Mr. Duncan prior to August 1, 1947?

A. Yes, I saw him during the time that I was here on the 31st.

Q. The 31st of what?

A. July, 1947. He came down to the warehouse with Mr. Brewer on one occasion.

Q. When did you learn that Mr. Duncan had gone with Mr. Brewer? [165]

A. Not until later on, because Mr. Duncan was supposed to have taken a trip back East or the Middle West and then come back out here so, if he was going to work for Mr. Brewer, according to all I can find out, that made the earliest date around August 20th, or thereabouts.

Q. Had Mr. Duncan at any time during 1947 indicated to you any dissatisfaction that he had with the company? A. He did not, no, sir.

Q. What was the nature of your relationship with Duncan during 1947 or any other time, prior to August 1, 1947?

A. Mr. Duncan had always had a good relationship with me, as with all—as I have with all of our employees.

Q. Was that true of the relationship with the company? A. Yes.

Q. Do you know of any time when he had spoken of Mr. Sibert or any other member of the company as Mr. Rightmire had spoken of Mr. Sibert?

A. No, sir, I don't.

(Testimony of Harold W. Hilts.)

Q. How about Merriott?

A. I had a conversation with Mr. Merriott Saturday morning. He was working on his car.

Q. What Saturday morning?

A. Of August 1st. He was working on his car in back of Mr. Brewer's home, and at that time I talked to him and asked him if he wanted to continue to work for Paramount Pest Control [166] Service and he said, "Sure, I will work for anybody that will give me a job."

I said, "Well, I think we can offer you a good job," and he said, "Well, I will be there." I said, "Well, when will you show up?" And he said, "I think I will have my car finished so I can be on the job Monday morning."

I said, "That being the case, we will look for you Monday morning," and he said, "That is okeh by me. I will be there," and, of course, Monday he didn't show up.

Q. Had there been any indication on Mr. Merriott's part prior to that time as to whether or not he was dissatisfied in any manner as a Paramount Pest Control Service employee?

A. None that I could notice at all.

Q. Did you have any conversation with Mrs. Rosalie Brewer, the wife of Charles P. Brewer?

Mr. Benard: When?

Mr. Rankin: During the month of July.

A. No.

Q. July, 1947?

A. July of 1947? I didn't see Mrs. Brewer at all.

(Testimony of Harold W. Hilts.)

Q. You ultimately ascertained, did you not, that Mr. Brewer, your agent, and Mr. Duncan, Mr. Rightmire and Mr. Merriott, who had been your employees and operators, were all leaving your company? A. Yes, sir. [167]

Q. And Mrs. Brewer, who had kept the office, was leaving with her husband?

A. That is correct.

Q. Was there anybody left in your organization here in Portland?

A. There was not. We had to transport men from Washington and California into this area, at great expense to us, to get them to contact our customers. We even had to bring supplies and equipment into the area. I had ordered it ahead of time because Mr. Brewer, after saying that he would turn over to me the equipment, as per his franchise agreement, on termination, that he would turn over to me his supplies and equipment—I left it at that until I tried to get them on Saturday morning, August 1st, at which time he refused me entry into his warehouse and instructed the man, Mr. Celsi, with whom the lease was signed, not to allow me to go in there at all, even after he had turned over the key to me to that warehouse, and said that I had no business in there, and there was a little bit of a scene at the time, at which time we stated to Mr. Celsi—Mr. Fisher and I were there, and Mr. Brewer and Duncan were there together, and I said, “We will abide by Mr. Brewer’s request and we will not touch the warehouse or try to gain entry to it until he requests it himself.”

(Testimony of Harold W. Hilts.)

Q. How long did you stay here at that time?

A. I was here about three weeks.

Q. During that three weeks what were you doing? [168]

A. Checking the supplies, trying to help organize the men that were then sent here and, in some cases, contacting a few of the customers, former customers. I found out they were former customers; because of Mr. Brewer's action, they were not our customers any more. Managed the business in general.

Q. Did you get any inventory from Mr. Brewer of the articles that had been here in the Paramount Pest Control Service?

A. Mr. Brewer and I took inventory together.

Q. What happened to that?

A. That was retained in the files.

Q. What did it disclose as to whether or not you had been delivered all the equipment that you were to take?

A. Well, when I realized what had happened, as per good business judgment, I took into consideration that probably I did not have all the inventory. I did not think I had a complete inventory and, so, I requested to go out to his house with him. At that time I went out to the house with him and we picked up various little items and some chemicals and some things like that, and he had told me at that time there was a little piece of spray equipment, which is foreign to our type of operation, and he said he had purchased that himself, or he had made a down payment on it, but he had—or he had bor-

(Testimony of Harold W. Hilts.)

rowed it—and he had turned it back. I left that in his possession, as far as that is concerned.

Of course, he refused to turn over any of the equipment [169] after that time which was in the warehouse. As a matter of fact, the actual situation was this, that, after he gave me access to the warehouse and the office, then, when I tried to get some equipment out of it is when I ran into trouble with Mr. Celsi, the owner of the warehouse, and he would not allow me entrance until Mr. Brewer had come down, and I did notice, when Mr. Brewer came down and checked the equipment later, that there was equipment that was not there that he had shown on the inventory, indicating that he had taken it out and was bringing it back, when he finally agreed to turn it over to us. His excuse was—it was quite an involved story.

These supplies and equipment, or the equipment in this particular case, that he had brought back, which were missing upon my second investigation of the warehouse, he said was used to spray some insects that was in Mr. Earl Merriott's home, but the complication of that is that Mr. Earl Merriott was supposed to have been on a hunting trip and he was still supposed to have been spraying his home with this equipment.

Q. How about the chemicals? Do you have any record of the chemicals, as to whether or not Mr. Brewer took any of the chemicals?

A. I wouldn't know, because I did not search his premises. I didn't think that was my right.

(Testimony of Harold W. Hilts.)

Q. You don't know whether or not any other department of Paramount Pest Control Service furnished him with any particular [170] poisons which were not returned to Paramount later?

A. I didn't get your question, Mr. Rankin.

Q. I had reference to whether you had knowledge that some other departments of Paramount Pest Control——

A. Oh.

Q. ——some other agency had furnished him with any materials?

A. Mr. Osborn from Seattle, manager and agent, had sent him, just previous to this time—I say just previous to this time; a matter of a few days—some Compound 1080 that he had borrowed from Mr. Brewer at an earlier date.

Q. Do you know what quantity that was?

A. Yes, he returned him three cans.

Q. Is that 1080 the item Mr. Bushing described as being very difficult to get?

A. Yes, sir.

Q. And being very lethal in its qualities?

A. That is the product, yes.

Q. Three cans. What is the size of those cans?

A. They are eight-ounce cans.

Q. How long would three eight-ounce cans last, ordinarily?

A. Depends upon how much business a man did with those three cans. It could last a year.

Q. Do you know whether or not Mr. Brewer was doing business as a pest control business under any assumed name?

A. Yes. [171]

(Testimony of Harold W. Hilts.)

Q. When did you learn that?

A. Immediately, on the 3rd or 4th of August.

Q. August 3rd or 4th? A. Yes.

Mr. Rankin: I think all this matter here is of record, your Honor. I will expedite it I think by simply calling the attention of the Court to it.

Exhibit 46 is the assumed business name certificate, sworn to by Rosalie Brewer before H. K. Phillips, Notary Public, acknowledged before H. K. Phillips, Notary Public, I should say, and recorded in the records of Multnomah County, Oregon, and attached to this is the following certificate by Al L. Brown, County Clerk: “. . . do hereby certify that the above copy of assumed business name certificate is a correct transcript of the original, as the same appears of record and on file in my office and in my custody.”

Then there is, as Exhibit 47, a certificate of retirement, reading: “Know All Men by these presents that Rosalie Brewer, the undersigned who have (sic) heretofore been conducting the business of Pest Control under the assumed name or style of Brewer’s Pest Control and who have (sic) heretofore filed a certificate of such assumed name with the Clerk of the County of Multnomah, State of Oregon, have (sic) retired from the said business and no longer have (sic) any interest therein.

“Witness our hands and seals this 27th day of August, [172] 1947,” and signed “Rosalie Brewer.”

On that same date, referring to the 27th of August, 1947, the following certificate of assumed busi-

(Testimony of Harold W. Hilts.)

ness name was filed: "Know All Men by These Presents, that the real and true name and postoffice addresses of the persons conducting, having an interest in, or intending to conduct the business of pest control under the name or style of Brewer's Pest Control, at 4929 N. E. 28th Ave., Portland 11, Oregon, County of Multnomah, State of Oregon, are the following, to wit: Charles P. Brewer, Postoffice address 4929 N. E. 28th Ave., Portland 11, Ore."

All three of these certificates, two of assumed name and one of retirement, are duly certified by the County Clerk as being certificates on file in his office.

Q. (By Mr. Rankin): Now, Mr. Hilts, you have stated briefly that you found that Mr. Brewer was taking over some of the customers of Paramount Pest Control Service. Tell what you did in regard to that investigation.

The Court: Lay that aside. I would like to hear the cross-examination now on what he has already testified about.

Mr. Rankin: Yes, your Honor. All right.

Cross-Examination

By Mr. Bernard:

Q. What contact did you have with Mr. Brewer at the time you came to Portland? Strike that. What contact did you have with Mr. Brewer up to the time you came to Portland in April, 1946? [173]

A. Oh, I had seen him in the office.

(Testimony of Harold W. Hilts.)

Q. You did not discuss any of the formulas in any way, anything like that with him, did you?

A. No, sir.

Q. When you came to Portland in April, 1946, did anybody else come along? A. No, sir.

Q. You came up to help him set up a set of books? A. The books were already here.

Q. What did you come up for?

A. We came up to assist him with the territory and get him acquainted with the operation of the area. Mr. Brewer had never been in a position to know these things.

Q. How long were you here?

A. Oh, it was a week or ten days.

Q. You had not discussed any of the formulas of the company with him?

A. Oh, we discussed certain things of operation, certainly, such as how certain things were being used, and I assisted him in some questions that he had asked and also gave him some advise as to what had been my experience.

Q. In the extermination business?

A. Right.

Q. What contact did you have with him after that, during the year 1946, if any? [174]

A. I saw him the next time May 5, 1946.

Q. Maybe I can bring it out this way: When were you informed by anybody that the contract or franchise was being modified as to the matter of payment? A. In December, 1946.

(Testimony of Harold W. Hilts.)

Q. December, 1946? A. Yes.

Q. Who informed you as to that?

A. Mr. Sibert.

Q. Did he tell you what he had agreed upon?

A. Did he tell me?

Q. Yes. A. Yes.

Q. Did he tell you the date when he had agreed upon it?

A. He told me it was in September, September 12th.

Q. He had never mentioned it to you up to that time? A. No.

Q. You testified as to some conversation you had with Brewer January 20, 1947. Did Mr. Brewer tell you at that time that it was not his understanding that this change in the basis of payment was to continue after January 1st,—

A. No, sir, he did not.

Q. What did he tell you at that time?

A. There was no specific mention of that.

Q. I understood you on direct examination to say that on [175] January 20th he told you that there was to be a rearrangement as to percentages?

A. That was up to December 31st.

Q. When did he send—When, rather, did you send him this statement? A. March 15, 1947.

Q. Maybe I can make it clearer. Maybe I had better make it clear. When did you send him the statement showing the January and February payments made at that time on the 20-80 percentage basis? A. At that time, March 15th.

(Testimony of Harold W. Hilts.)

Q. Didn't you give that to him earlier than that?

A. Not on January and February, no sir. I had let him see my rough draft, but I didn't give him his statement.

Q. You say you let him see your rough draft,—where? A. In Portland.

Q. That showed the division of the profit 20-80 under the franchise as written?

A. It covered the franchise due, yes.

Q. On what date did you show him that?

A. March 13, 1947.

Q. What did he say to you?

A. He said, "Well, that is fine," and he made a payment to me.

Q. What did he say to you about it?

A. Nothing at all. [176]

Q. Well, how did it happen that two days afterwards you sent him this letter, changing that arrangement and putting this on a different basis?

A. That was of my own free will.

Q. You mean to say you changed it of your own free will, without any suggestion from Brewer?

A. Absolutely.

Q. And without explaining to him why you were doing it?

A. I didn't have to explain it to him. He understood the settlement, as I found out later myself, about the December 31st settlement, and it was understood by him. I didn't need to explain it to him.

(Testimony of Harold W. Hilts.)

Q. As I undersand it, you claim on March 13th you had rendered him a statement for January and February, made up on the 20-80 per cent basis?

A. Yes, that is right.

Q. And he made no objection to it?

A. He did not. He made a payment.

Q. And, without any further conversation with him or suggestion from him, you wrote this letter of March 15, 1947, after conversing with Mr. Sibert?

A. Yes.

Q. After conversing with Mr. Sibert?

A. That is right.

Q. Did you send him this letter special delivery?

A. I may have. I don't remember. We often do that.

Q. Was it because he told you if you were going on with that old arrangement he was through?

A. No, not at all.

Q. Where did you address it to him, his home or the office?

A. I wouldn't remember exactly. We addressed mail both places.

Q. Is it not a fact that you sent that letter special delivery to his home?

A. No, it is not not to my knowledge.

Q. Would you say you did not?

A. I don't know whether I did or not. I don't remember.

Q. You say in here, "Now, you have paid \$994.25 as franchise for January and February

(Testimony of Harold W. Hilts.)

which is \$482.03 over your January and February franchise.”

In other words, you had made out a statement and forwarded it to him with this letter showing January and February on the modified arrangement, hadn't you?

A. No, sir, not on the modified arrangement.

Q. In this March 15th letter?

A. That is a correct statement that I sent the January and February statement. January and February was not on the modified arrangement. Those figures were merely used—the statement I sent him at that time was as of December 31st.

Q. You say, “For January and February there is a net profit of \$1,016.55 with the franchise out of it, now you have drawn \$512.22 [178] for both months; if we take \$512.22 like you did that will be your franchise for January and February.”

That was on a different basis than the one you had, which you showed him on March 13th, wasn't it?

A. Yes. It was only set forth in that letter, however. There was no different accounting as of January and February, 1947, other than the 20-80 percentage basis.

Q. Then, you say: “Ted tried to explain this to me just before I came up this last time, but I didn't get it.” Who do you mean by “Ted”?

A. Mr. Sibert is referred to as “Ted.” He tried to explain to me the understanding that he had had with Mr. Brewer back in September, which ran up to December 31st of 1946, and I didn't understand

(Testimony of Harold W. Hilts.)

it, namely, operating dollar for dollar, on the dollar-for-dollar agreement.

Q. Are you through?

A. No. I said, namely, the dollar-for-dollar agreement.

Q. Then, this paragraph in here where you say, "For January and February there is a net profit of \$1,016.55 with the franchise out of it, now you have drawn \$512.22 for both months; if we take \$512.22 like you did that will be your franchise for January and February", that was done out of the goodness of your heart, by you and Mr. Sibert?

A. That is exactly right. Could I have a copy of the exhibit so I could follow it? [179]

Q. You have the exhibit there.

A. All right.

Q. I am not through referring to it, but if you want to read it and make any explanation, go ahead.

A. No.

Q. By the way, you spoke of a man named Taylor who was working here when Brewer got here or came up here. What was Taylor's arrangement with the company?

A. Spoke of a man by the name of Taylor?

Q. Yes, who preceded Mr. Brewer. I will put it this way: Who was working in this territory prior to the time Mr. Brewer came? A. Mr. Taylor.

Q. What was Mr. Taylor getting?

A. What? I don't understand.

Q. What was his remuneration? What was he getting?

(Testimony of Harold W. Hilts.)

He was working on a franchise—he was working on a branch manager's agreement, the same agreement Mr. Brewer signed and was working on until July 1, 1946.

Q. In other words, he was getting \$250 a month?

A. No, he was getting \$200 a month and he was getting 20 per cent of the gross profits in the territory.

Q. Is that the arrangement you gave Mr. Brewer when he first came up here?

A. Exactly the same.

Q. \$200 a month plus 20 per cent of the gross profits? [180]

A. Yes, sir.

Q. That is the arrangement that was made with Mr. Brewer when he first came here?

A. Yes, sir. Any men that are drawing over \$200 per month would have been charged to him as commission at the end or beginning of each month, and if the territory did not make a profit so that he would receive anything like that, he still retained the amounts for the men that would be involved, and that was his salary. To show you the way we operate and the amount of fairness of it, we try to help these fellows; in other words, we don't say, "If you check out and don't get——" We don't make a demand on him for it, never have.

Q. I understand, then, on March 15th you suggested this other arrangement in this letter to Mr. Brewer because you thought it was more advantageous to him?

A. Yes, sir.

(Testimony of Harold W. Hilt.)

Q. What happened in June, June 17th to 20th, that caused the arrangement to be changed as of July 1st?

A. We carried everything clear up to the end of the year, which made it then January and February, 1947, and up to the end, or December 31st, 1946.

Q. Why did you give him a different arrangement beginning July 1, 1947? Why did you go back to arrangement as of July 1st?

A. Mr. Brewer's idea. He wanted it.

Q. Although the other arrangement, you thought, was better, he [181] wanted to go back to the franchise arrangement?

A. Yes. He was better off ultimately. I might point out here on the basis of the dollar-for-dollar agreement, as we had understood that, to show you how much more or, rather, how much Mr. Sibert had believed in Mr. Brewer, Mr. Brewer could have accumulated a bank account, assets and everything else and only drawn a very meager amount for the period of time in which the same amount would be sent to us and then, if he wanted to—we were tied where we couldn't in any way come out on top; if he wanted to, he would have the whole thing and pull out.

Q. Under this 20-80 per cent arrangement you were to get 20 per cent of the gross business done, whether collections have been made or not?

A. That is correct.

Q. Any collections that were not made or losses sustained, why, of course, as to those Mr. Brewer would have to stand them?

(Testimony of Harold W. Hilts.)

A. No, sir, absolutely not. If he does not make a collection or a customer cancels out, leaving a balance owing, owing a balance, we don't take 20 per cent of that figure; we give it to him as a credit.

Q. This accounting you made for July, 1947, the figures you arrived at there are based on the accounts receivable? A. That is right.

Q. In other words, you figured the gross amount of business done; you took 20 per cent of that and arrived at the amount [182] which you claim to be due.

A. On the basis of the gross business. Let's say that 20 per cent is——

Q. Isn't it a fact that in the early part of July, when Mr. Brewer was informed you people were insisting that he should operate from July 1, 1947, on the old franchise basis, that he told you he was through? A. Absolutely not.

Mr. Bernard: That is all.

Redirect Examination

By Mr. Rankin:

Q. Mr. Hilts—— A. Yes.

Q. ——the defendant has challenged this franchise contract on the basis that its operation is unfair. You have, on cross-examination, indicated to the Court that it was better to go back on the franchise than it was for him to proceed on the dollar-take-home dollar-pay-company basis?

A. Yes.

(Testimony of Harold W. Hilts.)

Q. I wish you would explain just the benefit that accrued to Mr. Brewer or would have accrued to him had he seen fit to go on with the agreement that he had made.

The Court: I have got to get to the main issue in this case. I will hear Mr. Brewer tomorrow morning, so I will ask you to lay that aside. As I see it, this revolves around the [183] question of credibility, whether this contract was canceled or not. You have one more witness, your man Fisher, who will testify along the same line?

Mr. Rankin: Your Honor, if I have to select as between the witnesses, I would rather select another one. I would like to use Mr. Fisher, too, but I won't insist.

The Court: Have you another witness?

Mr. Rankin: Yes, your Honor, I have several witnesses.

The Court: On this key question of credibility, whether on June 17th, or whatever it is, this man said that he was all through.

Mr. Rankin: No. There were three people present Brewer, Hilts and Sibert.

The Court: Tomorrow morning, Mr. Bernard, be prepared to put your client on and cover what has been covered here today.

Mr. Bernard: Very well, your Honor.

(Thereupon, at 5:15 o'clock p.m., an adjournment was taken until Wednesday, January 21, 1948.) [184]

Court reconvened at 10:00 o'clock A.M.

Wednesday, January 21, 1948

CHARLES P. BREWER

one of the defendants herein, produced as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bernard:

Q. Where do you reside, Mr. Brewer?

A. At 4929 N. E. 28th Avenue, Portland, Oregon.

Q. When did you move to Oregon?

A. I moved in April, 1946.

Q. Did you purchase this property with the idea of being a permanent resident here?

A. I did.

Q. Where did you live prior to coming to Oregon? A. In Oakland, California.

Q. How long did you live there?

A. Three or more years.

Q. Mr. Brewer, in a general way, what was your occupation and business experience before you became connected with the Paramount Pest Control Service?

A. I was a mechanic, automobile and heavy-duty mechanic.

Q. Will you relate to the Court how you happened to become associated with the Paramount Pest Control Service? [185]

A. Well, my wife, Mrs. Brewer, and the lady that is now Mrs. Sibert were friends. She used to

(Testimony of Charles P. Brewer.)

live next door to us. She had begun to work for the Paramount Pest Control Service and through her I was introduced to Mr. Sibert and that is the way I first got acquainted with Mr. Sibert.

Q. Did you make application to the Paramount Pest Control Service for employment?

A. Not at the time. I never made application until after Mr. Sibert had asked me for two or three months to go to work for him.

Q. About when was that?

A. Oh, I would say that was some time—I went to work for him some time around February.

Q. 1946? A. Right.

Q. Did you own your home in Oakland?

A. We did.

Q. Will you tell the Court what you did for the Paramount Pest Control Service between the time you went to work for them and the time you came to Portland, going into whether or not any instructions were given you and things of that kind?

A. I went out from the office with Carl Duncan, who was then their instructor, and I went around to different accounts, saw how he mixed his bait and put it out for rats, also mice and cockroaches. I was on one job with him where he sprayed two [186] beds for bedbugs.

After about a week of that, close to a week, then I went out selling, by myself, to try and learn what there was about selling, and then I worked at that about a week, and then I went out alternately with one man or another on trouble checks, where they

(Testimony of Charles P. Brewer.)

were having trouble. I went along with them to see if I could help out or learn anything.

Q. You said Duncan would go out and mix bait for rats. How would that be done?

A. Well, as a general rule, the way of killing rats at that particular time was to cut apples and carrots, or vegetables with meat in it, small pieces, into small pieces, sprinkle on a little poison and go and put that out in the corners, behind boards or in places where rats would run.

Q. Was any other information given you as to how to mix any of these baits?

A. No, there wasn't. I asked Mr. Sibert for information so I could study up and find out what chemical I was handling or what I was doing and Mr. Sibert said I wasn't going to take an examination in the State of California and I didn't need to know all that technical knowledge.

Q. There have been introduced in evidence here certain exhibits which I believe you have examined outside the courtroom here.

A. I have.

Q. Was any information ever given to you as to any of the [187] formulas that go to make up any of the products represented by any of these labels?

A. No technical information was ever given me. They did tell me that on their mouse grain we had to take birdseed and sprinkle some poison on it and stir it up.

Q. No. 5-10, ant syrup; was any information ever given you as to that?